

# **Analysis of cases disposed of by the Central Administrative Tribunal**

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By

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## **Findings from simple statistical analysis**

The following section (page 5 onwards) lists the 100 sample cases chosen for this simple statistical analysis. The sample has been drawn randomly from decisions of different Benches of the Central Administrative Tribunal (CAT) between 2002 and 2013. The in-depth analysis that follows (page 63 onwards) is limited to 18 cases decided by the Principal Bench, CAT, New Delhi during October-November, 2013.

### **Findings from 100 sample cases:**

#### **I. Category of Petitioners**

About 40% of the total Original Applications (OAs) analysed have been filed by Group- C employees, making their numbers way more than Group- A & B employees individually. This can be attributed to the lack of avenues available to the lower group employees for the proper redressal of their grievances. This is mainly because of the faulty implementation of the policy of the government, and also in part due to the lack of awareness and understanding on part of the employees at lower levels.

Most of the petitioners surveyed were non-All India Service employees. Group B employees made up around 30% of the petitioners, while Group-A employees made roughly less than 30 (around 26%). Group employees included AIS employees such as the IAS, as well as the IPS. Other non-AIS employees included posts such as Group Captain (Air Force), Registrar, Director, Under Secretary etc.

#### **II. Relief sought**

In 22% of the cases filed in the Central Administrative Tribunal, the issue agitated by the petitioners was that of promotion, wherein they requested the Tribunal to direct the concerned department to grant them promotion, or challenged the promotion of their colleagues in certain cases.

Around 21% of the cases analysed were filed in the area of pay fixation and increments, with a number of cases being filed where the petitioner was aggrieved that the pay scale was not in line with the Pay Commission or his post in the government.

Roughly 20% of the cases filed prayed for quashing of the suspension orders issued by various departments against the petitioners, on grounds of non-competence of disciplinary proceedings and discrepancies in the findings of the departments. Such cases are usually accompanied with prayers for re-instatement of service, with full pay and arrears for the period of suspension.

In 14% of the cases, the petitioner filed the OAs to challenge the selection process, such as exams or interviews carried out for ascertaining promotion within the department, or for selection for service in the government of India. Majority of petitioners in this category were Group-A employees.

13% of the cases filed prayed for the regularization of services offered by the petitioner, and majority of petitioners in this category were Group-C employees.

5% of the cases were filed by spouses of ex-employees (retired, or mainly, dead), seeking employment for themselves or their children on compassionate grounds expressing the right to livelihood enshrined in the Constitutional matrix.

4% of the cases analysed were filed by petitioners seeking to retain their government accommodation, as against orders of the concerned authority to shift out of the said accommodation.

### **III. Policy of the government/Application of the policy**

Around 51% of the petitions sought relief directly against the existing policy of the government. This policy could vary from the policy on selecting candidates for promotion, to the policy on regularizing the services of temporary employees or those employed on a contractual basis. Other policy issues seen in the cases analysed so far are policy on suspension from government service, policy on increasing the pay scale and granting benefits to employees and the policy on government accommodation provided to employees.

38% of the cases were filed against the application of the policy of the government, i.e. against directions and orders issued by the departments, acting according to the existing policy.

11% of the cases filed concerned both the policy as well as its application by the government in the concerned case.

### **IV. Cases decided in favour of:**

49% of the cases were decided in favour of the petitioner, while 49% of the rest were decided in favour of the respondents. In 2% of the cases the petition had become infructuous due to the concerned department awarding the required remedy, or absence of applicants or his representative for a continued period of time.

### **V. Relief and Nature of Relief granted by the Tribunal**

In the cases praying for promotion or consideration for promotion, the Tribunal directed the respondents to quash the existing stand on promotion of the applicants, and others like him/her, and consider the application of the petitioner. The Tribunal does not, *per se*, order promotion of the applicant, instead it directs the concerned ministry or department to consider the case of the petitioner afresh.

In majority of the cases of pay fixation and increments, the Tribunal did not find fault with the Ministry's fixation of pay, and usually dismissed the OAs. But in cases of actual discrepancy in pay and arrears, the Tribunal ordered a direct revision of the pay scale of the applicant and ordered reliefs such as payment of arrears due and consequential benefits immediately.

In cases praying for regularization of services, the Tribunal went deep into the merits of the case, as well as the policy on regularization of the government in specific cases. It advised the concerned Ministry or Department on how to change the policy on regularization of services, as such cases were filed mainly by impoverished Group-C employees, who were dependant on the work, even if temporary, provided by the government for their basic livelihood.

In cases concerning revoking of suspension orders, the Tribunal did not as such interfere with the decisions taken by the relevant Ministry or Department, but in cases where mala fide was suspected it ordered a re-inquiry with proper proceedings, or in the rare instance, upturned the suspension orders and re-instated the applicant with full consequential benefits and arrears, with immediate effect.

In cases where the petitioners challenged the selection process, the Tribunal followed the law laid down by its own earlier judgments or the judgments of the Supreme Court.

## **VI. Pre-Litigation process**

Only in 47% of the cases was a reply given by the Department concerned, before the litigation process in the CAT. This goes to show that in the majority of the cases, the Department is deaf to the grievances of the employees, and therefore they have to proceed to the CAT, as they are left with no other option. With the Department not handling the grievances of the employees, the CAT gets flooded with cases, which could have been avoided at an earlier stage, only if the Department had undertaken proper redressal of the said grievances. Such malpractice leads to wasteful litigation, resulting in ever-increasing costs and delay in disposal of cases with actual merit.

On an average, the time taken by the Central Administrative Tribunal is approximately 1-2 years, which indicates the huge backlog of the Tribunal, brought about by unnecessary litigation, which could have been avoided by a proper pre-litigation process. The Government has recognized this, and formed a National Litigation Policy, to reduce the workload on the Tribunals and Courts and reduce the average time taken in disposal of cases.

For tribunals and the CAT in particular, the following guidelines should be followed to avoid wasteful litigation and unnecessary burden:

Given that tribunalisation is meant to remove the loads from Courts, challenge to orders of Tribunals should be an exception and not a matter of routine.

- In Service Matters, no appeal will be filed in cases where:
  - a) The matter pertains to an individual grievance without any major repercussion;
  - b) The matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications.
- Further, proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees. Appeals will not be filed to espouse the cause of one section of employees against another.

- Proceedings will be filed challenging orders of Administrative Tribunals only if
  - a) There is a clear error of record and the finding has been entered against the Government.
  - b) The judgment of the Tribunal is contrary to a service rule or its interpretation by a High Court or the Supreme Court.
  - c) The judgment would impact the working of the administration in terms of morale of the service, the Government is compelled to file a petition; or
  - d) If the judgment will have recurring implications upon other cadres or if the judgment involves huge financial claims being made.
- Appeals in Revenue matters will not be filed:
  - a) if the stakes are not high and are less than that amount to be fixed by the Revenue Authorities;
  - b) If the matter is covered by a series of judgments of the Tribunal or of the High Courts which have held the field and which have not been challenged in the Supreme Court;

## **Compilation of 100 sample cases**

<i>No.</i>	<i>Case name</i>	<i>Year</i>	<i>Bench</i>	<i>Category of petitioner</i>	<i>Areas/ issues agitated by applicant</i>	<i>Case decided in favour of</i>	<i>Relief granted</i>	<i>Petition seeking relief against</i>	<i>Time taken</i>	<i>Reply given by dept.</i>
1.	<i>Hari Ram Malik v. Revenue Secretary, Ministry of Finance</i>	2001	Principal Bench, New Delhi	Inspector of Central Excise (B)	Promotion	Petitioner	Annexures of the respondent quashed and directions issued to consider applicant's claim of time-bound ad hoc promotion.	Policy of the government	4 yrs.	Yes
2.	<i>Smitha V.M. v. General Manager, South Western Railway</i>	2012	Bangalore Bench	C	Discrimination on basis of caste	Petitioner	Railway circular saying benefit of reservation not applicable to petitioner to be quashed, as it contravenes Articles 15(4) & 16(4) of the Constitution.	Policy of the government	1 yr.	Yes

3.	<i>D.N. Upadhyay v. Divisional Railway Manager, North Eastern Railway</i>	2006	Allahabad Bench	Retired, (B)	Contempt petition, for non-payment of Pension and retirement gratuity	Respondent	Against the order of the Tribunal, a W.P. was issued before the High Court. Tribunal directed enforcement of the Order of the High Court, calling for payment of the dues to petitioner	Application of the policy of the government	5 yrs.	No
4.	<i>Jamaludeen v. Secretary, Ministry of Defence</i>	2013	Jodhpur Bench	C	Non-payment of appropriate salary after promotion (Pay Fixation)	Petitioner	The Original Application (OA) was allowed and the respondents were directed to take required steps towards payment of appropriate salary and the consequential benefits to the petitioner.	Application of the policy of the government	8 months	No

5.	<i>Virender Singh v. Directorate of Education, Govt. of NCT</i>	2004	Principal Bench, New Delhi	Trained Graduate Teacher (TGT) (B)	Petition for regularizing services of petitioner and treating him on par with other employees	Respondent	The OA was dismissed, directing the petitioner to apply for regularization at the time of selection tests, subject to the availability of regular vacancy	Policy of the government	3 yrs.	Yes
6.	<i>D.K. Abrol v. Secretary, Ministry of Science &amp; Technology</i>	2002	Principal Bench, New Delhi	A	Retention of Government accommodation	Respondent	OA dismissed, as Tribunal did not deem the case fit for intervention by it.	Application of the policy of the government	11 yrs.	Yes
7.	<i>Kamla Singh v. Commissioner, Municipal Corporation of Delhi (North)</i>	2013	Principal Bench, New Delhi	Junior Labour Officer (B)	Retention of possession of government accommodation	Petitioner	OA allowed, with directions to pay dearness allowance to the petitioner.	Policy of the government	1 yr.	No

8.	<i>Minakshi Sharma v. Secretary, Ministry of Home Affairs</i>	2013	Principal bench, New Delhi	Radio Technician (B)	Pay Fixation	Respondent	The OA was dismissed, as the applicants were already in-receipt of a special pay (@25%) and were not entitled to the reliefs claimed by them.	Both policy and application of the policy of the government	2 yrs.	Yes
9.	<i>Madan Mohan v. Divisional Railway Manager, Northern Railway</i>	2008	Principal Bench, New Delhi	Diesel Cleaner (C)	Promotion	Respondent	Contempt petition, filed to direct the respondents to adhere to order of the tribunal. Tribunal found order had already been complied with.	Policy of the government	6 months	No

10.	<i>M. Sivakarhika v. Commissioner of Labour, Labour Department, Govt. of Puducherry</i>	2013	Chennai Bench	Nursing orderly (C)	To quash the appointment list issued by the respondent and instead allot the job of nursing orderly to the applicant under the quota for physically handicapped (PH) citizens	Petitioner	The respondent was directed to issue fresh notification calling for applications from all PH candidates and consider the case of the applicant.	Policy of the Government	4 months	Yes
11.	<i>N.C. Joshi v. Chairperson, New Delhi Municipal Council</i>	2012	Principal Bench, New Delhi	TGT (B)	Promotion- Declare that the action of the respondent in not considering the name of the petitioner in the panel of candidates for selection to the post of vice principal is wholly illegal and violative of Article 16 of the Constitution of India.	Respondent	Just because the applicant was occupying the post of Additional education Officer (AEO) as a tenure post, he cannot be counted among those who could have formed the part of the set to be in the zone of consideration for appointment as Vice Principal/DEO.	Application of the Policy of the Government	1 yr.	Yes

12.	<i>Amit Bhimte v. Secretary, Ministry of Urban Development</i>	2012	Jabalpur Bench	Occupation Assistant (C)	Promotion	Respondent	The Tribunal dismissed the OA, saying that it is only when the process of assessment is vitiated on the grounds of bias, mala fides or arbitrariness that the selection calls for interference. Since none of the above were present, OA was dismissed	Policy of the Government	1 yr.	No
13.	<i>Joginder Singh v. Secretary, Ministry of Urban Affairs &amp; Employment</i>	1987	Chandigarh Bench	C	Pay Fixation	Petitioner	Issue under consideration had already been decided by the High Court, as well as the Supreme Court, and hence the applicants were entitled to the benefits as adjudged by the Apex Court.	Policy of the Government	7 yrs.	No

14.	<i>Maganbhai Parmar v. Union of India</i>	2010	Ahmedabad Bench	Safaiwala (C)	Regularization of services and grant of consequential benefits	Petitioner	The respondents were directed to pass appropriate orders within a period of three months granting continuity of service for pensionary and other benefits.	Application of the policy of the government	2 yrs.	Yes
15.	<i>Ram Charan v. Secretary, Ministry of Defence</i>	2008	Principal Bench, New Delhi	Cane Man (C)	Pay Fixation	Petitioner	The Tribunal allowed the pay scale of Rs. 4000-6000 and to disburse arrears to the applicant within a period of four weeks.	Policy of the government	1 yr.	No
16.	<i>Anantha Ramu v. Secretary, Ministry of Railways</i>	2007	Bangalore Bench	Senior Commercial Clerk (C)	Reinstatement from suspension with full arrears and benefits, and quashing of inquiry proceedings against him	Respondent	The respondents were directed to complete the disciplinary proceedings before 3 months of receipt of order and dismissed the OA	Application of the policy of the government	1 yr.	Yes

17.	<i>R.K. Sahoo, v. Secretary, Ministry of Home Affairs</i>	2010	Cuttack Bench	Data Entry Operator (B)	To quash the order of cancellation of appointment as violative of Articles 14 and 16 of the Constitution.	Respondent	The OA was dismissed, as the applicant did not join his post within the specified period, and after the order of cancellation, another candidate was appointed, whose post would have to be annulled, which is unfair.	Policy of the government	3 yrs.	Yes
18.	<i>C.V. Elsi v. Secretary, Department of Women and Child Development</i>	2013	Ernakulam Bench	Demonstration Officer (B)	Contempt Petition	Respondent	Matter pending before Supreme Court, hence petition dismissed.	Policy of the government	6 yrs.	No
19.	<i>Rathindra Dutta &amp; Ors. v. Secretary, Ministry of Coal and Mines</i>	2009	Guwahati Bench	Lab Assistant (C)	Pay Fixation	Petitioner	The OA was upheld as the change in qualifications could be made so far as future recruitments are concerned, and could not affect those already recruited.	Application of the policy of the government	4 yrs.	No

20.	<i>V.R. Reddy v. Secretary, Personnel &amp; Training, Ministry of Home Affairs</i>	2009	Hyderabad Bench	Project Director (A)	Promotion	Respondent	The OA was dismissed as the same issue was under consideration in the High Court of Andhra Pradesh, and has also been decided by the same Tribunal in O.A. no. 1826/2000.	Policy of the government	8 yrs.	Yes
21.	<i>Sunil Sonkar v. General Manager, Ministry of Railways</i>	2013	Jabalpur Bench	Helper (Retd.) (C)	To set aside the order of removal from service issued by the respondent, and grant any other benefit the Tribunal may be deem fit.	Respondent	The OA was dismissed as the applicant was charged with misbehaviour and man-handling of his superior officers, which is a grave offence, and the penalty imposed is not disproportionate to the gravity of the offence.	Policy of the government	4 yrs.	Yes

22.	<i>H.P. Sharma v. Secretary, Ministry of Personnel, Public Grievances &amp; Pensions</i>	2013	Jaipur Bench	Superintendent of Police (A)	Promotion to the Indian Police Service (IPS)	Respondent	The Tribunal directed the respondent to decide the representation of the applicant by a reasoned & speaking order according to the provisions of law expeditiously but not later than a period of two months from the date of receipt of the representation.	Policy of the government	1 yr.	No
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23.	<i>Sabira v. Director General, Department of Posts</i>	2013	Lucknow Bench	Wife of ex-employee who was a Chowkidar (C)	To issue a direction to the respondents to grant the family pension and other retirement benefits, and to give the appointment on compassionate grounds to applicant no.2 (son of said ex-employee)	Petitioner	The OA was partly allowed, as the family pension was to be suitably calculated and paid to the family; whereas the appointment request was turned down.	Policy of the Government	5 yrs.	Yes
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24.	<i>M.D. Sathe v. Secretary, Ministry of Finance</i>	2013	Bombay Bench	Assistant, Commissioner of Central Excise (Retd.) (A)	To direct the respondents to sanction and pay to the Applicant regular Pension; and to direct the Respondents to release the amount of Gratuity, Leave Encashment and Commutation of Pension to the Applicant forthwith along with interest @12% per annum	Petitioner	The OA was partly allowed, wherein the respondents were directed to release retiral benefits alongwith arrears of the pension of the applicant admissible to him and start payment of regular pension.	Application of the policy of the government	2 yrs.	No
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25.	<i>M.K. Pathak, v. Secretary, Ministry of Information &amp; Broadcasting</i>	2013	Patna Bench	Announcer/ Comperer (B)	Regularization of services of applicant against the post of announcer, and granting of consequential benefits	Petitioner	The OA was upheld and the Tribunal directed the respondents to consider the case of the applicants for regularisation and eventual absorption against the regular vacancy in due course or alternatively to formulate a scheme for regularisation of the eligible applicants.	Policy of the government	16 yrs.	Yes
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26.	<i>S.M. Khandelwal, v. Secretary, Ministry of Communication &amp; Information Technology</i>	2011	Jodhpur Bench	JTO, Secondary Switching Area (B)	Re-instatement of employment	Respondent	The applicant's contentions of suffering from neurosis and Depressive Disorder was not accepted by the Tribunal, as both diseases could not occur together; and the applicant was already 67 years old, i.e. his retirement age had already passed.	Application of the Policy of the government	4 yrs.	No
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27.	<i>Narinder Singh v. Secretary, Ministry of Finance</i>	2004	Principal Bench, New Delhi	Commissioner of Income Tax (A)	Removal of charges of embezzlement of funds against the applicant	Petitioner	The OA was upheld because there was a little lack of supervision, without ill motives and there being no gross negligence, it would be difficult to import the concept of misconduct in this regard.	Policy of the government	1 yr.	Yes
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28.	<i>Sonu v. Commissioner of Police, Government of NCT</i>	2006	Principal Bench, New Delhi	Constable (Retd.) (C)	Applicant prayed for quashing and setting aside the action of the respondents by which they did not permit her to appear for an interview. Therefore, she has sought a direction from the Tribunal to issue her letter of appointment for the post of Woman Constable	Petitioner	The OA was upheld as the rights of the respondents would not be prejudiced in any way.	Application of the policy of the government	45 yrs.	No
29.	<i>Keshav Ram v. Secretary, Ministry of Health and Family Welfare</i>	2005	Principal Bench, New Delhi	Safai Karamch ari (C)	Applicant filed OA before the Tribunal to ascertain reasons as to why he was not considered for the post of Safai Karamchari	Respondent	Since the application had not been filed within one year from the accrual of the cause of action, at that stage, the Tribunal was not inclined to entertain any application.	Policy of the government	1 yr.	Yes

30.	<i>Sudhir Kumar v. General Manager, North Eastern Railway</i>	2013	Allahabad Bench	Senior Personnel Officer (A)	Pay fixation	Respondent	Petition had become infructuous, as the request of the applicant had been accepted by the respondents.	Policy of the government	8 yrs.	No
31.	<i>Banwari Lal v. Commissioner, Municipal Corporation of Delhi</i>	2010	Principal Bench, New Delhi	Malaria Balder (C)	Regularization of services	Petitioner	The Tribunal, without going into the merits of the case, directed the respondents to regularize the services of the applicant and extend the consequential benefits.	Policy of the Government	4 months	No
32.	<i>K.C. Tiwari v. Secretary, Ministry of Defence</i>	2012	Bombay Bench	Lecturer (A)	Pay Fixation	Respondent	The Tribunal did not deem it fit to interfere at this stage, as the concerned authority had not taken its ultimate decision, which would have a bearing on the issue.	Policy of the government	5 yrs.	Yes

33.	<i>Meerabai v. Deputy Chief Mechanical Engineer, South Central Railway</i>	2009	Hyderabad Bench	Petitioner wife of ex-employee, who was a Gangman (C)	OA filed for entitlement to compassionate pension due to the husband of the petitioner, who died due to ill health, acquired while working in the Railway Workshop	Petitioner	The respondents were directed to reconsider the application of the applicant and make necessary inquiries to determine whether the applicant is really in distress and unable to maintain herself and in case it is found that she is really in distress, the respondents shall fix the compassionate pension and pay the same	Policy of the government	3 yrs.	No
34.	<i>M.K. Dongre v. General Manager, West Central Railway</i>	2011	Jabalpur Bench	Technician (B)	Promotion	Respondent	The OA was dismissed in limine as time barred due to delay in filing the case	Application of the policy of the government	1 yr.	Yes

35.	<i>Srinivas v. Secretary, Ministry of Steel &amp; Mines</i>	2012	Bangalore Bench		OA filed for compassionate appointment therefore expressing the right to livelihood and the right to life enshrined under the Constitutional matrix	Petitioner	The OA was upheld and the respondents were directed to marshal their vacancy under the 5% quota available and then grant 3 opportunities for the applicant and others like him, therefore that it may not be an empty formality but a meaningful exercise.	Policy of the government	6 months	Yes
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36.	<i>Rasheed Jameel v. General Manager, South Central Railway</i>	2007	Hyderabad Bench	Health Inspector (Retd.) (B)	The applicant filed the OA with the prayer to direct the respondents to dispose of the representation filed by the applicant, with speaking orders, in connection with fixation of his pay, duly taking into account fitment increments within a stipulated period.	Petitioner	The respondents were directed to revise his pay as above and grant consequential relief to the applicant as applicable under the rules, within six weeks from the date of receipt of the order.	Application of the policy of the government	2 yrs.	Yes, but with irregularities
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37.	<i>Abdul Wahab v. Secretary, Ministry of Urban Affairs &amp; Employment</i>	2013	Ernakulam Bench	Dark Room attendant (C)	Disbursement of salary arrears	Petitioner	The Tribunal held that payment of arrears of salary to the applicants as per revision of pay scale was not contingent upon revision of the Recruitment Rules. In the facts and circumstances of these OAs. Also, the applicants should be paid interest @ 9% p.a.	Policy of the government	1 yr.	No
38.	<i>Shyamlal Kaushik v. Secretary, Ministry of Environment and Forests</i>	2012	Chandigarh Bench	Deputy Conservator of Forests (Retd.) (A)	Promotion	Respondent	Since the applicant had retired and private respondents 3 & 4 were not filing reply, therefore, the applicant did not want to press this O.A. and same may be disposed of as such.	Application of the policy of the government	1 yr.	Yes

39.	<i>K.B. Bhujel v. Secretary, Ministry of Finance</i>	2010	Guwahati Bench	Deputy Commissioner, Central Excise (A)	Prayer for promotion to the post of Joint Commissioner	Petitioner	The OA was partly allowed, as regards the first prayer, the Tribunal held that unless the matter was adjudicated by the Respondents, no decision could be taken. However, with regard to the second prayer considering his promotion to the cadre of Joint Commissioner, the Tribunal directed promotion, as the applicant was retiring very soon.	Application of the policy of the government	7 months	Yes
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40.	<i>Kishan Lal Saini v. Secretary, Ministry of Communication &amp; Information Technology</i>	2012	Jaipur Bench	Gardener/ Pump Driver (C)	Regularization of services	Respondent	The Tribunal did not deem fit to interfere, as the same issue had been decided by the Jodhpur as well as the Hyderabad Bench.	Policy of the government	1 yr.	Yes
41.	<i>Rajender Prasad v. Chairman, Delhi Transport Corporation</i>	2013	Principal Bench, New Delhi	Driver (C)	OA filed praying for payment of arrears and all consequential benefits for period of 6 years, wherein the applicant was suspended by the respondents, on account of a chargesheet being filed against him, but was later cleared of the charges	Respondent	The Tribunal held that, according to the Regulations, the applicant was suspended not due to unfair reasons, but due to him being in judicial custody pending investigation, and hence he is entitled to full pay and allowances.	Policy of the government	6 months	No

42.	<i>Narender Kumar v. Member, Delhi Jal Board</i>	2013	Principal Bench, New Delhi	Chlorinat or Operator (B)	OA filed for expeditious disposal of disciplinary proceedings against the applicant with in period of 3 months	Petitioner	The Tribunal issued directions to the respondents to take necessary steps to ensure completion of the pending disciplinary proceeding within a period of four months from the date of receipt of a copy of this order.	Application of the policy of the government	1 yr.	No
43.	<i>Bhagwan Das v. Secetary, Ministry of Defence</i>	2013	Principal Bench, New Delhi	Assistant Engineer (A)	Contempt petition, as order of tribunal to the respondents not to make further promotions to the post of Executive Engineer not adhered to by the respondents	Petitioner	The respondents presented the order revoking the promotions, and hence petition dismissed.	Application of the policy of the government	6 months	No

44.	<i>S.S. Nehra v. Secretary, Ministry of Civil Aviation</i>	2013	Principal Bench, New Delhi	Captain (A)	OA was filed with a prayer to quash the impugned charge-sheet wherein the applicant, while working in the Directorate of Flying Training of DGCA HQ., New Delhi during 2009-10 did not obtain previous sanction of the Govt. to permit employment of his son in Civil Aviation	Petitioner	OA was allowed partly, with the respondents given liberty to proceed in the matter afresh from that stage onwards.	Application of the policy of the government	2 months	Yes
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45.	<i>D.R. Lohar v. Secretary, Ministry of Health &amp; Family Welfare</i>	2012	Principal Bench, New Delhi	Research Assistant (A)	The OA was filed to quash and set aside the charge memo against him for misconduct and misbehaviour and issue direction for releasing the retirement dues of the applicant along with 24% interest and 24% interest on late payment of Leave encashment and CGEIS on the name of vigilance enquiry	Respondent	The Tribunal found that the substantive part of the reliefs sought by the applicant was granted by the respondents themselves during the pendency of this O.A., while the applicant was not entitled to the other reliefs sought.	Application of the policy of the government	1 yr.	No
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46.	<i>Shasi Bhanu v. Vice Chairman, Delhi Development Authority</i>	2012	Principal Bench, New Delhi	Junior Engineer (B)	The applicant in this OA had challenged the Memorandum issued by the respondent proposing to hold an inquiry against him under Regulation 25 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999.	Petitioner	The OA was partly allowed, as the respondents were directed to consider the applicant's representation, without going into the merits of the case	Application of the policy of the government	1 yr.	Yes
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47.	<i>Subhash Chand v. India Trade Promotion Organization</i>	2012	Principal Bench, New Delhi	Assistant (Accounts) (B)	The applicant submitted that he had been removed from service without holding any proper enquiry, and without any application of mind at all levels. The applicant had initially filed this case as Writ Petition before the Delhi High Court which came to be transferred to this Tribunal	Respondent	Before the TA was filed, eight different departmental enquiries, at the most 32 different minds would/could have been applied, as the 8 Disciplinary Authorities, the 8 Enquiry Officers, the 8 Appellate Authorities, and the 8 Revisional or Review Authorities, and hence it is not valid for this Tribunal to interfere with the conclusions arrived at by the concerned authorities in one particular case.	Application of the policy of the government	10 months	No
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48.	<i>Anju Nangia v. Chairman, MTNL</i>	2012	Principal Bench, New Delhi	Stenographer (C)	Seniority	Respondent	The Transfer Application (TA) from the Delhi High Court was barred due to limitation and hence, dismissed.	Policy of the government	3 yrs.	No
49.	<i>Sudhanshu Mohan v. Chairman, Union Public Service Commission</i>	2013	Principal Bench, New Delhi	Research Assistant (B)	OA was filed to challenge the selection process	Petitioner	Tribunal allowed the applicant to withdraw the OA and initiate appropriate legal proceedings.	Both application and policy of the government	6 months	No

50.	<i>Vishnu Swarup v. Secretary, Ministry of Urban Development &amp; Poverty Alleviation</i>	2012	Principal Bench, New Delhi	Chief Medical Officer (A)	The applicant was aggrieved by the order of the respondents whereby he was intimated that he was not entitled to payment of conveyance allowance during the period August 2002 to June, 2008 and the amount of Rs.1,17,150/- already recovered on that account was justified. Applicant prayed for the refund of Rs.1,17,150/- effected without following any lawful procedure with penal interest @18% p.a. for the period of retention <sub>35</sub>	Respondent	The Tribunal felt that the matter in the case did not relate to the respondents, and the applicant should take up the matter with the concerned Income Tax Authorities.	Both policy and its application by the government	2 yrs.	No
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51.	<i>M.K. Gupta &amp; Ors. v. Secretary, Ministry of Information &amp; Broadcasting</i>	2013	Principal Bench, New Delhi	Compere (B)	Relief sought by the applicants in this Application is only to consider their cases for grant of first financial upgradation under ACP Scheme.	Petitioner	The respondents were directed to consider the representations of the applicants.	Application of the policy of the government	1 yr.	No
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52.	<i>Ram Kishan Verma v. Secretary, Railway Board, Ministry of Railways</i>	2009	Principal Bench, New Delhi	Driver (C)	The OA was filed with the prayer that the Tribunal may be allow the Application and direct the Respondents to consider the case of the Applicant for acceptance of voluntary retirement of the Applicant and to give employment to his son on the suitable post as per the Scheme.	Respondent	Since the applicant has sought voluntary retirement on medical grounds, which has been accepted by the respondents on a clear undertaking given by the applicant that he will not be claiming any appointment in respect of his son or other dependent family members, the present OA does not survive and is accordingly disposed of.	Both policy and its application by the government	3 yrs.	Yes
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53.	<i>Aman Singh v. Chairman, Delhi Transport Corporation</i>	2013	Principal Bench, New Delhi	Bus Conductor (C)	The applicant sought permission to withdraw the present OA with liberty to file a fresh OA after having exhausted departmental remedy for the desired relief.	Respondent	OA dismissed, as departmental relief from the concerned authority was not exhausted.	Policy of the government	4 months	No
54.	<i>I.B. Sharma v. General Manager, North Central Railway</i>	2011	Principal Bench, New Delhi	Junior Clerk (C)	Pay Fixation and increments	Respondent	The Tribunal found that neither basic pay nor the pay scale, nor the grade pay of the applicant had been wrongly fixed. The applicant's contention that she was forced to work in Junior Scale was absolutely baseless since she had wilfully accepted her reversion as Junior Clerk.	Both policy and its application by the government	2 yrs.	Yes

55.	<i>Ram Rajiv v. Secretary, Railway Board, Ministry of Railways</i>	2013	Principal Bench, New Delhi	Cabin Man (C)	The OA was filed to challenge the selection process	Respondent	The Tribunal noted that the Railway Authorities need not issue clarificatory circular because the same was based upon the decision of the Division Bench of the Punjab & Haryana High Court.	Policy of the government	4 yrs.	No
56.	<i>Anang Pal v. Joint Secretary, Council of Scientific &amp; Industrial Research</i>	2011	Principal Bench, New Delhi	Senior Hindi Officer (A)	Pay fixation	Petitioner	The Tribunal directed the Senior Hindi Officers will continue to draw the higher pay scale of Rs.10000-15200. Further, in view of these directions, the question of making recovery of excess amount from the applicants also would not arise.	Policy of the government	2 yr.	Yes

57.	<i>B.K. Pathak v. Director, Delhi Health Services</i>	2013	Principal Bench, New Delhi	Lecturer (B)	Pay fixation, contempt petition	Respondent	Contempt is a different jurisdiction, and in contempt jurisdiction, no orders can be passed extending the contours of the orders passed in the Original Application determining inter parties' rights.	Policy of the government	9 yrs.	No
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58.	<i>Bhim Singh Arora v. Chief Secretary, Government of NCT, Delhi</i>	2011	Principal Bench, New Delhi	TGT (B)	Pay fixation	Petitioner	The Tribunal was convinced that the case of the applicant was identical to that of Sh. Jagdish Prasad who was allowed benefit of stepping up of pay by order of a Co-ordinate Bench of this Tribunal passed in OA-1494/2008 on 01.04.2009. Accordingly, the applicant would also be entitled to the same benefit as was given to the applicant of OA-1494/2008.	Application of the policy of the government	2 yrs.	No
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59.	<i>Mohar Singh v. Vice Chairman, Delhi Development Authority</i>	2013	Principal Bench, New Delhi	Fitter (C)	OA was filed against the Order dated of the Appellate Authority upholding the penalty imposed by the Disciplinary Authority imposing penalty of 10% cut in pension for two years with effect after on compulsorily retiring the applicant from service	Respondent	Tribunal held that the applicant could have challenged his order of retirement, but he chose not to do that and instead acquiesced with by accepting payments. The challenge to compulsory retirement had come through the path of challenge to the departmental proceedings.	Both policy and its application by the government	1 yr.	Yes
60.	<i>Vishwainra Singh v. Secretary, Ministry of Finance</i>	2013	Principal Bench, New Delhi	Inspector, Central Excise (B)	The OA was filed against the respondent's memorandum under rule 14 of the CCS Rules, 1965, whereby he was charged with misconduct	Respondent	The Tribunal held that the applicant's plea of the delay in the proceedings was not sustainable.	Policy of the government	6 months	No

61.	<i>Minimol Shaji &amp; Ors. v. Secretary, Ministry of Health &amp; Family Welfare</i>	2013	Principal Bench, New Delhi	Staff Nurses (C)	The OA was filed to conduct promotion from the post of staff nurse to Nursing sister on the basis of merit and seniority.	Respondent	The Tribunal held that the OA was premature as no cause of action arose for the same.	Policy of the government	1 yr.	Yes
62.	<i>Bharat Bhushan v. Secretary, Ministry of Finance</i>	2013	Principal Bench, New Delhi		The OA was filed against charges filed against the applicant, and for consequential benefits to be awarded.	Respondent	The Tribunal found the reliefs and the interim reliefs to be contradictory, and directed the respondents to hold an inquiry against the applicant.	Application of the policy of the government	1 yr.	Yes
63.	<i>P.P. Sudha v. Secretary, Ministry of Defence</i>	2011	Principal Bench, New Delhi	Junior Hindi Translator (Retd.) (C)	Pay fixation and increments	Petitioner	The respondents were directed to consider the application of the petitioner and give a reply within 6 weeks of the receipt of this order.	Policy of the government	2 yrs.	No

64.	<i>Ravi Dass v. Commissioner, Municipal Corporation of Delhi</i>	2013	Principal Bench, New Delhi	Municipal Engineer (A)	The review application (RA) has been filed on the ground that there is an error apparent on the face of the record inasmuch as even after holding that the case of the applicant is similar to that of Sh. C.M. Vij O.A. the present O.A. has not been allowed.	Petitioner	The Tribunal was convinced that an error apparent on the face of the record has occurred inasmuch as the aforesaid plea of the applicant could not be considered.	Application of the policy of the government	1 yr.	No
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65.	<i>Mukesh Kumar v. General Manager, North Western Railway</i>	2011	Principal Bench, New Delhi	Parcel Porter (C)	Regularization of services	Petitioner	The Tribunal noted that the Respondents themselves had considered the case of absorption of a number of similarly placed Parcel Porters and regularized their services. Therefore, the cases of the Applicants could not be left out.	Both policy and its application by the government	2 yrs.	Yes
66.	<i>Gajraj Singh v. Chief Secretary, Government of NCT, Delhi</i>	2013	Principal Bench, New Delhi	Surveyor of Works (A)	Promotion and pay fixation with arrears and pension	Petitioner	The Tribunal held the respondent's act of promoting a junior of the applicant, and denying the same to the applicant as unjustified and untenable.	Policy of the government	2 yrs.	No

67.	<i>Rishipal Rana v. Commissioner, Municipal Corporation of Delhi</i>	2010	Principal Bench, New Delhi	Director (A)	Contempt petition, to direct the respondents to amend the recruitment and promotion rules	Petitioner	The Tribunal noted that considerable time had been taken by the respondents to notify the Recruitment Rules and thus they should consider the case of the applicants.	Both policy and its application by the government	3 yrs.	No
68.	<i>All India CGHS Ayurvedic Physicians Association v. Secretary, Ministry of Health &amp; Family Welfare</i>	2013	Principal Bench, New Delhi	Ayurvedic Doctors (A)	Pay fixation of Ayurvedic doctors on par with their counterparts, Allopathic doctors.	Petitioner	The Tribunal was of the considered view that the benefits of the Pay Commissions should be available to all streams, in the general context of the government having accepted the recommendations of the 6 <sup>th</sup> CPC.	Both policy and its application by the government	3 yrs.	Yes

69.	<i>Shashi Bala v. Secretary, Ministry of Home Affairs</i>	2013	Principal Bench, New Delhi	Pers- III, FHQ, (B)	Pay Fixation, and re-instatement of service	Petitioner	The Tribunal noted that the applicant was genuinely sick during the period of absence and her only charge was that she failed to intimate the authorities, which did not deserve such a harsh punishment.	Policy of the government	3 yrs.	Yes
70.	<i>P.K. Das v. Chairman, BSNL</i>	2013	Principal Bench, New Delhi	JTO (B)	Promotion	Petitioner	The Tribunal directed the respondents to re-evaluate the answer sheets of the qualifying exam for promotion, and release a fresh list of qualified candidates.	Application of the policy of the government	1 yr.	Yes
71.	<i>Mohinder Singh v. General Manager, Northern Railway</i>	2013	Principal Bench, New Delhi	Vehicle Driver, Grade – I (C)	Promotion and Seniority	Respondent	The Tribunal dismissed the OA on the grounds of both merits as well as limitation.	Policy of the government	2 yrs.	No

72.	<i>Pitamber v. Commissioner of Police, Government of NCT, Delhi</i>	2008	Principal Bench, New Delhi	Constable (C)	Re-instatement of service, with intervening period being treated as period spent on duty, with consequential benefits and arrears	Respondent	The Tribunal held that as this was a case in which the criminal conviction and subsequent acquittal had nothing to do with the service of the applicant, the department could not be saddled with any financial liabilities on that score.	Policy of the government	1 yr.	Yes
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73.	<i>Ashok Kumar v. Commissioner of Police, I.P. Estate, Delhi</i>	2009	Principal Bench, New Delhi	Constable (C)	The OA was filed to assail the legality and correctness of the findings of the Inquiry Officer based on which the order of removal of the applicant had been passed.	Respondent	The Tribunal found that the conduct of the applicant deserved imposition of an exemplary cost. However, having regard to the fact that he had already been removed from service for his misconduct, the Tribunal imposed a nominal cost on the applicant quantified at Rs.5,000/-	Application of the policy of the government	10 months	No
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74.	<i>Shuman Mukherjee v. Chairman, Steel Authority of India</i>	2013	Principal Bench, New Delhi	Director (A)	Promotion and Seniority	Respondent	The Tribunal however, directed the respondents to consider posting the applicant in Delhi for the balance period of his service provided a suitable post is available and the applicant is otherwise eligible to hold it.	Policy of the government	7 months	No
75.	<i>Rajeev Tandon v. Union of India &amp; Ors.</i>	2005	Principal Bench, New Delhi	AIS- IPS (A)	OA filed to challenge the selection process, i.e. the Civil Services (Mains)	Respondent	Tribunal forwarded the matter to a Division Bench of the Supreme Court.	Policy of the government	1 yr.	No

76.	<i>B.S Rana v. Commissioner of Police, Government of NCT, Delhi</i>	2013	Principal Bench, New Delhi	Head Constable (C)	The OA was filed to oppose the out of turn promotion awarded to the colleague of the applicant, for bravery and gallantry shown against militants in an encounter.	Respondent	Tribunal rejected the contentions of the applicant.	Policy of the government	2 yrs.	No
77.	<i>Sat Pal v. Chief Secretary, Government of NCT, Delhi</i>	2007	Principal Bench, New Delhi	Constable (C)	The OA was filed against the inflictment of punishment of temporary forfeiture of service for a period of one year entailing proportionate reduction in applicant's pay.	Respondent	The Tribunal found sufficient corroborative evidence that the applicant had asked for a bribe and the driver had paid the same, and hence dismissed the petition.	Application of the policy of the government	3 yrs.	Yes

78.	<i>V.P. Garg v. Chief Secretary, Government of NCT, Delhi</i>	2009	Principal Bench, New Delhi	Deputy Superintendent (B)	Promotion & Seniority	Petitioner	The Tribunal found that the Respondents adopted a deviated procedure and kept the regular posts vacant for the sealed cover case officers and ignored the selected officers in the panel for regular promotion. This was wholly irregular and not backed by the statutory rules or guidelines.	Application of the policy of the government	12 yrs.	No
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79.	<i>Manish Kumar &amp; Ors. v. Government of NCT, Delhi</i>	2009	Principal Bench, New Delhi	Fire Operator (C)	The OA was filed to challenge the selection process of recruitment of fire operators, with charges of corruption levied against the authorities by the applicants	Respondent	The Tribunal found that the applicants could have informed the concerned authorities about the malpractices occurring in the selection process, and cannot now file an OA as an afterthought.	Application of the policy of the government	1 yr.	No
80.	<i>Sulakhan Singh v. General Manager, Northern Railway</i>	2013	Principal Bench, New Delhi	Senior Clerk (C)	Regularization of services; and promotion	Petitioner	The Tribunal found that the respondents had granted the applicants regularity of service, while promotion was another matter, for which a separate OA would have to be filed.	Policy of the government	1 yr.	Yes

81.	<i>K.L. Pathak &amp; Ors. v. General Manager, Northern Railway</i>	2007	Principal Bench, New Delhi	Millwright Fitter (C)	OA filed against turning down of transfer application of the applicant on being rendered surplus	Petitioner	The Tribunal found that the respondents were not fair in the whole process, and adopted a pick-and-choose policy and hence OA upheld.	Application of the policy of the government	2 yrs.	No
82.	<i>D.K. Yadav v. General Manager, Northern Railway</i>	2002	Principal Bench, New Delhi	Bungalow Khallasi (C)	OA filed against termination of services of applicant on grounds of unsatisfactory working	Petitioner	The Tribunal set aside the termination of the applicant, and directed the respondent to reinstate him with all consequential benefits and arrears, as the termination orders were issued without valid disciplinary proceedings against the applicant.	Both policy and its application by the government	3 yrs.	No

83.	<i>S.K. Kaushik v. Secretary, Ministry of Health &amp; Family Welfare</i>	2013	Principal Bench, New Delhi	General Manager, AIIMS Cafeteria (B)	Pay fixation and increments	Respondent	The Tribunal held that the applicant had not shown any act on the part of the respondents that had led to either reduction in his pay scale or that he was getting salary less than any of his subordinates, and hence dismissed the OA.	Application of the policy of the government	2 yrs.	Yes
84.	<i>Jagdishwari Devi v. Secretary, Ministry of Information &amp; Broadcasting</i>	2007	Principal Bench, New Delhi		The OA sought direction to the respondents to reconsider her case for appointment on compassionate grounds and offer her job, if she is found fit, as her husband, employed with All India Radio (AIR) died in 2003.	Petitioner	Since the applicant had applied pursuant to the advertisement released by AIR, the respondents should sympathetically consider the application of the petitioner, provided he fulfilled all other requirements.	Policy of the government	1 yr.	Yes

85.	<i>Seema Kumari v. Chairman, Delhi Subordinate Services Selection Board</i>	2013	Principal Bench, New Delhi	Primary Teacher (B)	The Contempt petition was filed for re-issuing of the Result Notice of the selection test.	Petitioner	The Tribunal dismissed the Contempt Petition as the order of the Tribunal had already been complied with by the respondents.	Application of the policy of the government	1 yr.	No
86.	<i>Rajpal v. Secretary, Ministry of Human Resource &amp; Development</i>	2005	Principal Bench, New Delhi	Casual Labourer (C)	Regularization of services of the applicant	Respondent	The applicant was asking for regularization under a scheme that had already expired in 1993, and hence OA was dismissed.	Policy of the government	2 yrs.	No

87.	<i>Geeta Sabharwal v. Director General, Health Services, Union of India</i>	2004	Principal Bench, New Delhi	LDC, (B)	The OA sought the seniority list to be quashed and set aside; and direct the respondents to fix the seniority of the applicants from the date they were selected in accordance with the Rules and joined their duties	Petitioner	The Tribunal disposed of the OA with a direction to the respondents to re-consider seniority of applicants as LDCs in the light of our observations made above, within a period of three months from the date of receipt the order.	Policy of the government	1 yr.	Yes
88.	<i>Anand Singh v. Secretary, Ministry of Law &amp; Justice</i>	2012	Principal Bench, New Delhi	Peon (C)	Regularization of services	Petitioner	The Tribunal directed to consider the representation of the applicant, and pass a speaking order and convey their decision to the applicant.	Policy of the government	7 months	No

89.	<i>D.V. Verma v. Lt. Governor of Delhi, Government of NCT, Delhi</i>	2013	Principal Bench, New Delhi	Group Captain (A)	Re-instatement of post-retirement services of applicant wherein he was appointed as Deputy Commissioner of Municipal Corporation of Delhi (MCD)	Respondent	The Tribunal found that since the appointment of the applicant was done on direct recruitment basis, which is against to the statutory Regulations, the respondents rightly relieved the applicant from the post of Deputy Commissioner by passing the impugned order. The applicant cannot have any objection since his appointment itself for a limited period of one year and that too which is made against to the relevant statutory Recruitment Regulations.	Both policy and its application by the government	5 months	Yes
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90.	<i>Mukesh Chand v. Secretary, Ministry of Defence</i>	2012	Principal Bench, New Delhi	UDC (A)	Promotion and seniority	Petitioner	The respondents were directed to ignore the below benchmark gradings while considering the case of the applicant for promotion to the higher grade and accordingly, grant him promotion, if otherwise eligible, with all consequential benefits as per rules, but it was made clear that he was not entitled for any arrears.	Policy of the government	1 yr.	Yes
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91.	<i>A.K. Kapoor v. General Manager, Northern Railways</i>	2013	Principal Bench, New Delhi	Chief Engineer (A)	Retainment of government accommodation, and consequent jurisdiction of tribunal in present matter	Petitioner	OA dismissed, as Tribunal agreed with applicant's contentions that Tribunal did not have jurisdiction to adjudicate upon the present matter, under Section 15 of the Eviction Act.	Application of the policy of the government	4 months	No
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92.	<i>Bhule Ram v. Secretary, Ministry of Communication</i>	2011	Principal Bench, New Delhi	Postman (C)	OA filed against chargesheet filed against applicant under Rule 14 of CCS (CCA) Rules, 1965 by the respondent	Petitioner	The Tribunal was of the opinion that the respondents failed to prove the charges against the applicant beyond reasonable doubt and hence upheld the OA. However the respondents were at liberty to proceed against the applicant afresh in accordance with the law.	Application of the policy of the government	2 yrs.	Yes
93.	<i>S.S. Dixit v. Chairman, Hindustan Prefab Ltd. &amp; Ors.</i>	2012	Principal Bench, New Delhi	Section Officer (A)	OA filed against arbitrary transfer of applicant, and for regularization of his services.	Respondent	The Tribunal found that the applicant was wilfully absent from service for long periods of time and hence could not regularize his services.	Application of the policy of the government	1 yr.	Yes

94.	<i>Badri Lal v. Director of Education, South Delhi Municipal Corporation</i>	2013	Principal Bench, New Delhi	TGT (B)	Regularization of services	Dismissed	OA became infructuous since the respondents had since granted the relief the applicant was looking for.	Policy of the government	6 months	No
95.	<i>Rajesh v. Secretary, Department of Training &amp; Technical Education</i>	2013	Principal Bench, New Delhi	Instructor (B)	Regularization of services, as Instructors were hired on contractual basis	Petitioner	The Tribunal directed the respondents reinstate the applicants in service and allow them to continue in service till regular appointment is made to teach the subject employability skills.	Policy of the government	11 months	No
96.	<i>Programme Staff Association of All India Radio Doordarshan v. Secretary, Ministry of Information &amp; Broadcasting</i>	2013	Principal Bench, New Delhi	Programme Executive (A)	Promotion	Petitioner	OA closed as the respondents acquiesced to the applicant's requests.	Application of the policy of the government	1 yr.	Yes

97.	<i>S. Santhoshkumar v. Chairman, BSNL</i>	2013	Principal Bench, New Delhi	JTO (B)	OA filed against selection process for promotion to the post of Sub-Divisional Officers.	Respondent	The Tribunal followed the law laid down by the Supreme Court in similar cases, and found the OA not maintainable.	Application of the policy of the government	1 yr.	Yes
98.	<i>K.K. Miglani v. Secretary, Ministry of Communication</i>	2011	Principal Bench, New Delhi	Deputy Secretary (A)	Pay fixation and increments	Respondent	The Tribunal did not find any merits in the case.	Policy of the government	2 yrs.	Yes
99.	<i>Mangesh Tyagi v. Commissioner of Police, Government of NCT, Delhi</i>	2013	Principal Bench, New Delhi	Registrar (A)	OA filed, but no person appeared in court on behalf of applicants	Dismissed	Tribunal held OA to have become infructuous.		4 yrs.	No
100.	<i>Amit Dabas v. Chief Secretary, Delhi Secretariat, Government of NCT, Delhi</i>	2013	Principal Bench, New Delhi	TGT (B)	OA filed to extend the benefit of other OAs and consider admitting the applicant as a Teacher if he is found eligible.	Respondent	The Tribunal found that the entire selection process came to an end long back and that the vacancy was filled up with another person on whom certain rights have already been accrued upon.	Policy of the government	1 yr.	No

## In-depth case analysis of 18 cases

### *1. Arvind Kumar Kajla v. Regional Director, Staff Selection Commission*

Principal Bench, New Delhi

October 2013

#### **FACTS**

- The applicant appeared for the examination for recruitment of Sub Inspector in Central Police Organization (CPO for short), Assistant Sub Inspector in Central Industrial Security Force (CISF for short) and Intelligence Officer in NCB, 2011.
- The applicant had opted as his first preference for Gcategory i.e. SI in CISF and as second preference, the post of Intelligence Officer in NCB.
- As per the notice of the examination, the candidates applying for 'G' category were required to score above the cut off marks fixed by the Commission in Paper-I to be eligible to be called for Physical Endurance Test (PET)/ medical examination and finally ranking is done by further adding Paper II marks for selection of candidates.
- Based on Paper-I results, the applicant was asked to appear for the PET on 17.10.2011 and for Medical Examination on 18.10.2011. The applicant did not appear for both the PET and the Medical Examination on the stipulated dates.
- The case of the applicant is that he did not appear for the PET and Medical Test as there was an age limit of 25 years for this post and since his date of birth is 19.08.1985, as on 24.06.2011, his age was 25 years and 10 months.
- The applicant's case is that thereafter he was awaiting his call for the post of IO in NCB as according to him, he had obtained 123.5 marks in Paper I and 162.5 marks in Paper II i.e. a total of 286 marks against the cut off of 262.5, but he never got the call for PET for the post of IO in NCB. It may be mentioned that for the post of IO in NCB, both Paper I and Paper II were required to be cleared before being called for PET and Medical Examination.
- The reason accorded for the abovesaid is that the department basically did not evaluate Part II of the examination paper because, though he entered his roll number correctly at two places, he forgot to code it and for this trivial error, the respondents gave him zero marks in this paper, thus disqualifying him.

#### **RELIEF SOUGHT**

The Original Application (OA) had been filed seeking the relief that the applicant's answer sheet of Paper II should be evaluated and to further process his case for appointment to the said post in NCB, to direct the respondents to intimate reasons for rejection of his candidature and declare the letter dated 7.03.2012 in which he has been awarded zero marks, thereby rejecting his candidature merely for mistake/ discrepancy committed in his answer sheet, as perverse and arbitrary etc.

## **QUESTION(S) BEFORE THE TRIBUNAL**

Whether a candidate can be disqualified for a trivial error such as not coding the answer sheet in the correct place?

## **CONTENTIONS OF THE APPLICANT**

- The applicant cited order of this Tribunal in OA 740/2013 decided on 8.08.2013 in which the Tribunal had held that the trivial mistake of not indicating the date of the postal order in the form should not have formed the basis for cancellation of the applicant's candidature.
- The applicant also stated that the applicant had prayed for appointment to the post of IO in NCB and NCB fell under the Ministry of Home and hence the matter lay within the jurisdiction of this Tribunal.

## **CONTENTIONS OF THE RESPONDENT**

- The respondents raised the preliminary objection about jurisdiction of this Tribunal on the ground that the services belong to armed forces and hence Tribunal's jurisdiction was debarred according to Section 2 (a) of the Administrative Tribunals Act, 1985.
- The respondents also contended that the cut off marks for UR candidate (i.e. the applicant) for the post of IO in NCB were 262.75. However, the applicant had scored 126 marks in Paper I and 'zero' marks in Paper II for the reason of non-coding of his roll number in the OMR sheet. Hence, name of the applicant did not figure in the result list of IO in NCB. That was the sole reason why the candidate was not called for PET and Medical Test.
- It was emphasized by the respondents that in the notice of the examination, under the general instructions to be complied by the candidates in the written examination, it was clearly stated that the candidates should read instructions and follow them carefully. In the answer sheet also, on top, it was written that the answer sheet not bearing candidate's name, roll number etc. would not be evaluated and awarded 'zero' marks.
- The respondents had also stated quoting the letter dated 7.03.2012 of the Staff Selection Commission ('SSC for short) that 790 candidates of Paper II had been rejected and awarded 'zero' marks due to various such discrepancies and it was not that the applicant only had been singled out and discriminated against.
- The respondents also raised the issue that knowing that he was overage, the applicant applied for 'G' category which did not show the conduct of the applicant in good light.

## **RELIEF GRANTED**

The Tribunal allowed the OA, and directed the respondents to evaluate Part II of answer sheet of the applicant, accord marks and declare it. The Tribunal further held that if the applicant scored above the cut off marks, he should be invited for PET/ Medical Test/ Interview and if

he qualified in them, appointed as IO in NCB. This exercise would have to be completed within a period of two months from the receipt of a copy of this order.

### **REASONS BEHIND JUDGMENT**

- The Tribunal held that it was a fact that while taking the exams, slight errors could happen as the examinees were under lot of stress at that point of time.
- There had been no intention of the applicant to hide any facts or give any misleading facts. He had also indicated his roll number and ticket number correctly.
- The Tribunal also cited the Supreme Court judgment in *Commissioner of Police & Ors. v. Sandeep Kumar<sup>1</sup>*, in which the Apex Court took a lenient view and condoned indiscretions made by young people rather than brand them as criminals for the rest of their lives. The Tribunal applied the same analogy in the present case and decided the OA in favour of the applicant.
- The Tribunal also considered the issue of the applicants being overage, but found it was not germane to the main issue, and in any case, the applicant had not appeared in the PET and Medical Examination.

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<sup>1</sup> (2011) 4 SCC 644

## **2. *N.K. Mishra v. Secretary, Ministry of Labour & Employment***

Principal Bench, New Delhi

November, 2013

### **FACTS**

- The applicant was a 75% physically handicapped (PH) person, and was initially appointed as peon with the respondents.
- Subsequently on the acceptance of recommendation of 6th Central Pay Commission abolishing the Group D posts and designating the existing incumbents as Multi-Tasking Staff (MTS for short), the applicant was also designated accordingly.
- The respondents issued an advertisement on 5.11.2009 in the newspapers inviting applications for recruitment of 70 posts of LDCs. Applicant was candidate for the same and he was declared successful in the written examination.
- However, he was not given appointment on the ground that the medical certificate showing him as physically handicapped person was not in the prescribed format.
- He was also informed vide respondents letter dated 24.2.2011 that his request for exemption in appearing in the computer skill test for PH candidates for recruitment to the post of LDC scheduled to be held on 26.2.2011, was considered in terms of the office memoranda but it was found that the recommendation of Medical Board/Civil Surgeon for exemption for typing test was not available in the certificate produced by him. Therefore, he was directed to appear in the aforesaid skill test.
- The applicant had then approached Chief Medical Officer, B.K.Hospital, Faridabad with an application along with Certificate for the person with disabilities issued by the office of Civil Surgeon, Faridabad vide certificate No.1452 dated 31.5.2006. The concerned Orthopaedic Surgeon, after considering his case, returned the said application in original with the remarks that the applicant was unable to perform fine movements with his right hand properly and the said remarks were also countersigned by the Civil Surgeon, Faridabad.

### **RELIEF SOUGHT**

The applicant was seeking the benefit of exemption from appearing in the Computer skill test for PH candidates for recruitment to the post of LDC. The OA was filed because the applicant's claim was rejected by the respondents due to lack of proper format and the absence of a specific statement from the Civil Surgeon saying that that the aforesaid physical disability of the applicant permanently prevented him from typing.

### **QUESTION(S) BEFORE THE TRIBUNAL**

Whether a general statement from a Civil Surgeon with the remarks that the applicant was unable to perform fine movements with his right hand properly, is sufficient for exemption from the Computer skill test?

## **CONTENTIONS OF THE APPLICANT**

- The applicant had got a statement from the Civil Surgeon, Faridabad, which generally stated that he could not perform functions with his right hand. The applicant contended that the said statement should be enough to convince the respondents of the disability, and thus grant him exemption.

## **CONTENTIONS OF THE RESPONDENT**

- The respondent contended that the applicant was not given appointment on the ground that the medical certificate showing him as physically handicapped person was not in the prescribed format.
- Further, the respondents contended that in the absence of specific certificate from the Civil Surgeon that the physical disability of the applicant permanently prevented him from typing, the applicant could not be given any exemption from the skill test.

## **RELIEF GRANTED**

The Tribunal directed the respondents to refer the applicant to the Civil Surgeon, Faridabad, within two weeks for another medical examination and obtain a certificate from him as to whether his physical disability permanently prevented him from typing or not. Further, on receipt of the certificate as aforesaid, the respondents were directed to consider and decide whether the applicant could be given exemption from computer skill test/typing test. If he was found eligible for such exemption, he would be appointed from the date his batchmates have been given appointment as LDC on the basis of merit list prepared by them with all consequential benefits except arrears of pay and allowances.

## **REASONS BEHIND JUDGMENT**

- The Court was of the opinion that remarks made by the Civil Surgeon dated 24.2.2011 should have been more than enough proof that the applicant was not capable of doing the typing work.
- However, since the respondents did not find the documents submitted by the applicant to be sufficient, they directed the respondents to refer the applicant to the Civil Surgeon and obtain a certificate as required by the respondents.

### **3. *S.K. Dubey v. Chief Secretary, Govt. of NCT of Delhi***

Principal Bench, New Delhi

November 2013

#### **FACTS**

- Shri Sanjeev Kumar Dubey, the applicant, while working in the Transport Department was caught red handed by Anti-Corruption Branch, Government of National Capital Territory of Delhi (GNCT Delhi for short) while taking bribe of Rs.1,000/- and FIR No.7/2000, P.S. Anti-Corruption Branch under Sections 7 and 13 of Prevention of Corruption Act (POC Act for short) was registered.
- The Hon'ble Court of Special Judge, Tis Hazari, Delhi convicted him in both cases and sentenced him to undergo Rigorous Imprisonment for a period of one year with fine of Rs.5000/- each.
- Aggrieved by the conviction and consequent sentence, the applicant preferred appeals No.101 and 102 of 2010 before the High Court of Delhi wherein the High Court was pleased to suspend the sentence and admit the appeal vide its order dated 3.02.2010.
- The applicant was at that time working in the Office of Chief Electoral Office but vide transfer order dated 16.07.2010; he was transferred to the Office of Commissioner Food Supplies & Consumer Affairs (CFS&CA for short).
- The Office of CFS&CA issued a show cause notice dated 24.01.2011 to the applicant proposing a penalty of dismissal from service under Rule 19 of CCA (CCA) Rules, 1965 based on his conviction in the corruption cases.
- The applicant filed a statutory appeal against his dismissal order but it was rejected. Being aggrieved by this action of the respondents, this OA has been filed.

#### **RELIEF SOUGHT**

The applicant in the OA sought revocation of the dismissal order issued by the Secretary, Food Supplies and Consumer Affairs, and thereby re-instatement of his service, with all consequential benefits including continuity in service, monetary and seniority benefits.

#### **QUESTION(S) BEFORE THE TRIBUNAL**

Whether on suspension of sentence by the High Court, the respondents can proceed against the applicant under Rule 19 of the CCS (CCA) Rules, 1965?

#### **CONTENTIONS OF THE APPLICANT**

- According to the applicant, the decision of the Chief Electoral Officer that no immediate action was required at that stage, was a decision as per Rule 19.
- According to the applicant the decision would be treated to be pronounced and communicated and as such, the Secretary-cum-Commissioner, Food Supplies and Consumer Affairs became functus officio. In this regard, the applicant relied on a

judgment of the Supreme Court in *State Bank of India and others v. S.N. Goyal*,<sup>2</sup>. As the Secretary had become functus officio, the respondent, had exceeded his powers, and thus the dismissal orders would be null and void, according to the applicant.

### **CONTENTIONS OF THE RESPONDENT**

- The respondents claimed that the decision to keep a close watch on the conduct of the applicant as well as the proceedings of the High Court was a mere internal consideration of the matter and not a proceeding under Rule 19 of the CCS (CCA) Rules. As such, it could not be said that the Chief Electoral Officer had already taken a decision under Rule 19.
- The respondents further emphasized that the High Court had only suspended the sentence. The conviction was not stayed.

### **RELIEF GRANTED**

The Tribunal found no merit in the OA and dismissed it accordingly, without costs.

### **REASONS BEHIND JUDGMENT**

- The Tribunal found that that the department had initiated action under Rule 19 of the aforesaid Rules in February-March, 2010 in the Office of Chief Electoral Officer, Delhi. However, only the decision to keep over a watch on the activities of the applicant was communicated and no final decision was taken and communicated on the departmental action proposed. This was later taken up after the transfer of the applicant to Food Supplies and Consumer Affairs department, after giving opportunity to the applicant to make a representation against the proposed penalty, as required under Rule 19, and after consideration of his representation, the penalty of dismissal was awarded. Therefore, the action of the respondents was procedurally correct and valid in law.
- The above conclusion was also clearly in accordance with law enunciated by the Apex Court in *S.N. Goyal* (supra), where it discusses as to when a quasi-judicial authority becomes functus officio.

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<sup>2</sup> (2008) 8 SCC 92

#### **4. *H.K. Sahu v. Secretary, Ministry of Water Resources***

Principal Bench, New Delhi

October, 2013

#### **FACTS**

- The applicant joined the respondents after being declared successful in Combined Engineering Services Examination, 1980 and was allocated to the Central Water Engineering Group A Service. He joined as Assistant Director on 23.11.1982.
- Gradually he rose to the position of Director and was so promoted on regular basis w.e.f. 6.6.2001. The applicant came to know that a DPC was held on 9.11.2009 for consideration for promotion to the grade of SAG in which he was not selected.
- He submitted his representations on 20.11.2009, 22.11.2009 and 25.3.2010. However, no action was taken by the respondents.
- On 21.4.2010, the applicant again made a representation requesting the Respondent No.1 to intimate to him the reasons for non-inclusion of his name in the list of promoted officers issued vide order dated 30.3.2010.
- The Respondent No.1 informed the applicant that he was not selected because the DPC has assessed him unfit for promotion.
- The applicant thereafter made representations on 19.4.2010 and 24.5.2010 to the competent authority for upgradation of grading in his ACR for the period 25.08.2005 to 31.03.2006. As a result, the competent authority upgraded his ACR grading for the aforesaid period from Good to Very Good and communicated the same to him vide OM dated 2.7.2010.
- Thereafter the applicant made representation on 6.7.2010 requesting the Respondent No.1 for convening the review DPC for his promotion to SAG grade against vacancies pertaining to the year 2009-10 and grant him promotion from the date his juniors were promoted. However, no reply was received from the respondents.
- On 25.1.2012, the applicant again requested the respondents to convene the review DPC giving examples of the cases of Shri Ghansyam Jha and Shri Ravinder Singh in whose cases such remedial action was taken by the respondents. On 30.3.2011, the applicant got promotion to the SAG grade as Chief Engineer but against vacancies pertaining to the year 2010-11. On 11.6.2012 by the impugned order, the applicant was informed that his representation regarding convening of review DPC and considering his promotion for the vacancies pertaining to the year 2009-10 has been examined in consultation with DoP&T and the same has not been agreed to.
- Aggrieved by the aforesaid order, the applicant had filed this OA.

#### **RELIEF SOUGHT**

- Call for the original file(s)/record(s) of the respondents No.1 to 3 dealing with proceedings of DPC held on 9.11.2009 for promotion to SAG of Central Water Engineering (Group A) service and peruse the same;

- Declare the order No.3/1/2009-Estt.(Vol.II) dated 30th March, 2010, pertaining to the list of promoted officers as illegal, arbitrary and discriminatory and accordingly quash the same to the extent the same does not contain the name of the applicant whereas his junior, i.e., respondent No.4 herein has been promoted;
- Direct the respondents No.1 to 3 herein to convene Review DPC for promotion to SAG of Central Water Engineering (Group A) Service against the vacancies pertaining to the year 2009-10 and to consider the applicant herein on the basis of his ACR for the period 25.8.2005 to 31.03.2006 which has subsequently been upgraded by the competent authority as Very Good and to promote the applicant to the grade of Senior Administrative Grade (SAG) of Central Water Engineering (Group A) Service from the date when his juniors have been promoted with all consequential benefits, viz., pay and perks from that date, arrears of pay, seniority, etc.
- Award cost of this application and proceedings against the Respondents and favour of the Applicant.

### **QUESTION(S) BEFORE THE TRIBUNAL**

Whether review DPC should be held based upon re-appraisal of ACR for the relevant period of the incumbent officer?

### **CONTENTIONS OF THE APPLICANT**

- The contention of the applicant was that the orders of the respondents were illegal, arbitrary and deserve to be quashed. According to him, the DPC held on 9.11.2009 took cognizance of un-communicated below benchmark remarks in his ACR for the period of 25.08.2005 to 31.03.2006. This was in flagrant violation of the Supreme Court judgments as well as Articles 14 and 16 of the Constitution.
- Moreover, the respondents convened a review DPC for Shri Ravinder Singh and Shri Ghansyam Jha on the premise of the directions of the Tribunal in OA No.3664/2010 given vide Order dated 8.10.2011. However, the respondents had discriminated against the applicant by not doing the same for him. These impugned orders were a result of colourable exercise of power by the respondents who were duty bound to assess the performance of the applicant objectively.
- According to the applicant, the relevant instructions of the DoP&T also directed convening of review DPC wherever adverse remarks in the CR was toned down or expunged after the DPC had considered them.
- The applicants counsel also stated that this case is squarely covered by the law laid down by the Apex Court in the case of *Dev Dutt v. Union of India*<sup>3</sup>, and also by the Division Bench Order dated 30.5.2011 of the Delhi High Court in Writ Petition No.3787/2011 titled *Union of India v. Dr. Vishnu Kant Srivastava*.

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<sup>3</sup> (2008) (7) SCALE 403

## CONTENTIONS OF THE RESPONDENT

- Without disputing the facts of the case, the respondents stated that the benefits envisaged in OM No.21011/2010-Estt.A dated 13.4.2010 were available to an employee only for consideration for promotion in future DPCs. Thus, as per these instructions, there was no provision for review DPC.
- Further they stated that while hearing the appeal in *Union of India v. A.K. Goel* and others, the Supreme Court had taken note of apparent conflict between their decisions in the case of *Dev Dutt* (supra) on one hand and their judgments in the cases of *Satya Narain Shukla v. Union of India*<sup>4</sup>, and *K.M. Mishra v. Central Bank of India*<sup>5</sup> and others, on the other hand and have by their Order dated 29.03.2010 referred this appeal to a Larger Bench. Thus, when a matter is sub-judice before a Larger Bench of the Supreme Court, this Tribunal should dismiss the OA.

## RELIEF GRANTED

- The Tribunal allowed the OA and quashed the impugned order of the respondents pertaining to non-feasibility of a review DPC. The respondents were further directed to convene the review DPC to consider the case of the applicant afresh for the vacancies pertaining to the year 2009-10 and in case, he was found fit, he would be promoted from the date his immediate junior was promoted to SAG. He would also be entitled to consequential benefits of pay fixation and seniority but no back-wages. This consideration would be done by the respondents within a period of eight weeks from the date of receipt of a certified copy of this order.
- The Tribunal, on finding that its own orders in certain OAs relating to similar issues were no longer sustainable, held that, in general, the adverse ACRs which falls within the consideration zone i.e. in the relevant 5 years before the date of holding the DPC, if not communicated earlier but are below bench mark would be communicated within a period of 4 weeks from today to the incumbent officer if not communicated so far. The respondent would then be eligible to make a representation within 15 days thereof if not made already, and that such representation would be decided by the competent authority, which, of course, would be higher in rank to the authority who gave the adverse ACR within next 2 weeks irrespective of the fact whether the Reporting Officer or the Reviewing Officer or both are available or not. In case, the ACR is upgraded, making the incumbent eligible for consideration, review DPC would be held based upon the reappraised ACRs for the relevant period within six weeks. In case, the review DPC finds the incumbent fit for promotion, the benefit thereof would be given to him from the date when he was entitled for promotion to the next post had the ACR in question would not have been considered averse to him with all consequential benefits.

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<sup>4</sup> 2006 (9) SCC 69

<sup>5</sup> 2008 (9) SCC 120

## REASONS BEHIND JUDGMENT

- The Tribunal cited the Delhi High Court relying on the Apex Court's decision in *Ashok Sadarangani and Anr. v. Union of India*<sup>6</sup>, wherein the Court dismissed the claim that pending decision of the Larger Bench, no relief could be granted.
- The Tribunal was of the considered view that an employee, who had below benchmark ACRs prior to the declaration of law, upon upgradation of those ACRs would be entitled to consideration for promotion in future alone. Such an interpretation would defeat the very purpose of the benefit intended to be given. The fact that below benchmark ACRs are upgraded pursuant to a representation made in that behalf goes to show that the concerned authority recognises and subsequently corrects an erroneous assessment made by it at the first instance. To restrict the benefit of such an admitted correction for the purpose of future DPCs would deprive the concerned employee of valuable rights.

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<sup>6</sup> AIR 2012 SC 1563

## 5. *B.S. Nehra v. Secretary, Ministry of Civil Aviation*

Principal Bench, New Delhi

October, 2013

### **FACTS**

- The applicant was appointed to the post of Junior Pilot in the Ministry of Agriculture on 30.09.1986 and following the post being declared as surplus, he was taken in the rolls of the Ministry of Civil Aviation w.e.f. 1.4.1992 vide order dated 22.06.1992.
- At the time of his transfer it was stipulated that his duties should be casual or supportive in nature so that the surplus employee can be relieved to join the alternative placement arranged for him by the Central Cell without any difficulty or loss of time. According to the applicant he has been working since then without being formally absorbed in the Ministry of Civil Aviation and has not been delegated any power of Director General, Civil Aviation (DGCA) and this fact has also been admitted by the respondents.
- Shri Karan Nehra, son of the applicant took admission in Carver Aviation Academy in Maharashtra for Commercial Pilot License training in 2006. The applicant claims that he had duly informed the Head of Department about it even though it was training.
- After completion of the training Shri Karan Nehra, son of the applicant was retained in the same Institute for two months, after which, he left the Institute and has not drawn any salary for the above short tenure. Subsequently he was selected vide letter dated 31.07.2010 as Co-Pilot/First Officer in Akash Ganga Airlines Limited, which is a non-scheduled operator, and till date this company has not come into operation or brought any aircraft and its permit/approvals have also expired.
- The applicant submitted that since he had no official dealings with Carver Aviation Institute or with the Akash Ganga there was no need to submit any information to the respondents with regard to the employment of his son, even though he did inform the department vide letter dated 16.11.2010.
- Thereafter, this OA was filed by the applicant with a prayer to quash the impugned charge-sheet dated 09.08.2012, wherein the following charge had been leveled against him: *“Capt. BS Nehra while working in the Directorate of Flying Training of DGCA HQ., New Delhi during 2009-10 did not obtain previous sanction of the Govt. to permit employment of his son, Mr. Karan Nehra in July 2010 with M/s Akash Ganga Airlines and Asstt. Pilot Instructor with Carver Aviation. By his aforesaid act, Capt. BS Nehra has violated the provisions of Rule 4 (1) & Rule 4 (2)(i) of CCS (Conduct) Rules and rendered himself liable to disciplinary action.”*

### **RELIEF SOUGHT**

OA was filed to quash the charge memo of 9.08.2012 issued against the applicant wherein he was found to be in violation of Rules 4 (1) & (2) of CCS (Conduct) Rules.

## QUESTION(S) BEFORE THE TRIBUNAL

Whether the act of a government servant, wherein he does not disclose the fact of employment of his ward to the prescribed authority, even when the said employment has not yet commenced, constitutes violation of Rule 4 (1) and 4 (2) (i) of the CCS (Conduct) Rules?

## CONTENTIONS OF THE APPLICANT

- The applicant submitted that in this case strictly according to the rules it was not obligatory on the part of the applicant to have informed the fact of employment of his son with the said two organizations but being a law abiding citizen the applicant did communicate these facts to the respondents.
- It was further contended that the present charge memo was a consequence of the applicant's action of filing an OA no.1304/2012, seeking the benefit of financial upgradation under MACP Scheme and subsequent Contempt Petition no.558/2012, which was subsequently closed on 12.09.2012 by granting two months more time to implement the judgment.
- The applicant contended that the impugned charge-sheet was in violation of law, as all the orders and charge-sheet etc. on behalf of the President are issued by the Ministry only after taking approval of the competent authority and in this case the DGCA issued the impugned charge on behalf of the President even without taking any approval from the competent authority.
- According to the applicant, he had not committed any violation of the Rules though his son had got employment with Akash Ganga Airlines Limited vide letter dated 31.07.2010. The company had not come into operation or bought any aircraft and its permission/approvals had also expired and the son of the applicant continued to sit idle at home. Practically there was no employment of son of the applicant with the Akash Ganga Airlines and, therefore, there could not be any violation of the Rules.
- The main contention of the learned counsel for the applicant was that the charge-sheet as was issued to the applicant was not approved by the competent authority, i.e., the Minister of Civil Aviation since the applicant was a class-I officer. The applicant relied on the following decisions of this Tribunal:
  - i) *B.V. Gopinath v. Union of India & Others*<sup>7</sup>, decided by the Principal Bench on 05.02.2009; and
  - ii) *Sri S.K. Srivastava v. Union of India & Ors.*,<sup>8</sup> decided by the Principal Bench on 18.12.2008.

## CONTENTIONS OF THE RESPONDENT

- The respondents vehemently objected to the prayer made by the applicant on the ground that it was a well settled law that at the stage of the charge-sheet the court should not interfere. In this regard, they relied on the decision of the Apex Court in

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<sup>7</sup> OA no.800/2008

<sup>8</sup> OA no.1434/2008

*State of Orissa v. Sangram Keshari Mishra*<sup>9</sup>, and *Ministry of Defence v. Prabhash Chandra Mirdha*<sup>10</sup>.

- It was submitted that the applicant has already acquiesced to the enquiry being conducted as a follow up to the impugned charge-sheet. He had written to the DGCA vide letter dated 04.02.2013 for changing the Enquiry Officer (EO) which was agreed and the EO has been changed and, therefore, at this stage he is estopped from challenging the charge-sheet itself.

## **RELIEF GRANTED**

The OA was allowed, and the charge-sheet memo of 9.08.2012 issued against the applicant was quashed. The respondents were, however, at liberty to proceed in the matter afresh from that stage onwards, if they so desired.

## **REASONS BEHIND JUDGMENT**

- The Tribunal found that the Ministry had not even made up its mind whether to take action for violation of the relevant conduct rules or not because the option of whether it should be accepted, kept on record or not accepted was also mentioned. It was also stated that as per Rule 4 (2) (ii) of CCS Rules there is a provision where a government servant can inform the prescribed authority even after the employment has begun if he did not have prior knowledge and was not dealing with the matter related to the employment.
- From the Tribunal's perusal of the records it was clear that not only that the draft charge-sheet was never approved by the competent authority before its issue but also that the competent authority had not made up its mind with regard to the issue of charge-sheet till the date of approval, i.e., 27.04.2012 and 07.05.2012. The respondents also did not produce any record to show that the charge-memo which was finally issued after receiving the 1st stage advice of the CVC was at any time approved by the competent authority.
- This principle in this regard had already been settled by the Supreme Court in *Union of India & Others v. B.V. Gopinath* and has been consistently followed in *Union of India & Others v. S.K. Srivastava*<sup>11</sup> and *Sudhir Ranjan Senapati v. Union of India & Others*<sup>12</sup> where non-approval of the charge sheet by the competent authority has been considered a fatal flaw in the disciplinary proceedings.

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<sup>9</sup> (2010) 13 SCC 311

<sup>10</sup> (2012) 11 SCC 565

<sup>11</sup> (Writ Petition (Civil) no.13223/2009)

<sup>12</sup> OA no.942/2009

## **6. *I.S. Rajpurohit v. Director, IARI***

Principal Bench, New Delhi

October, 2013

### **FACTS**

- This O.A. had been filed by the applicant challenging the impugned order dated 28.12.2012 by which was transferred from his present post in Delhi to Regional Station, Amartara at Shimla.
- The applicant was transferred on 28.12.2012 under the order of Director, IARI. He made a representation to Director General, ICAR on 03.01.2013. However, without waiting for any response to the same he filed this O.A. before this Tribunal on 09.01.2013. The representation made by the applicant has remained undecided so far.

### **RELIEF SOUGHT**

OA was filed with a prayer to quash the transfer orders of 28.12.2012 issued by the IARI.

### **QUESTION(S) BEFORE THE TRIBUNAL**

Whether the Tribunal was obligated to admit an application wherein the applicant had not yet availed of all the administrative remedies available to him under the relevant rules for redressal of his grievances, without going into the merits of the case?

### **CONTENTIONS OF THE APPLICANT**

- Transfer order has been issued by an incompetent authority.
- Concurrence of ICAR has not been obtained.
- Director, IARI did not have power to transfer the applicant with post.
- The transfer order has been issued to take revenge against the applicant as he had highlighted public scandal in a complaint to CBI.
- That the applicant would face serious health hardship as he is heart patient and cannot bear the winter of Shimla.

### **CONTENTIONS OF THE RESPONDENT**

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### **RELIEF GRANTED**

The Respondents were directed to decide the representation of the applicant within six weeks from the date of receipt of a certified copy of the order. If the applicant was aggrieved by the order passed by the respondents, he would be at liberty to challenge the same through appropriate judicial proceedings. According, this O.A. was disposed of.

## **REASONS BEHIND JUDGMENT**

- The Tribunal was of the opinion that the applicant should have waited for a decision on his representation before approaching this Tribunal. Without exhausting the administrative remedies available to him he should not have filed this O.A.
- Further, section-20 of the Administrative Tribunals Act, 1985 clearly says that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant rules for redressal of his grievances. Since the applicant's representation was still pending, the administrative remedies available to him have still not been exhausted. In the Tribunal's opinion, this case was not ripe for judicial review.

## **7. *R.S. Verma v. Director, Bharat Sanchar Nigam Limited***

Principal Bench, New Delhi

November, 2013

### **FACTS**

- The applicants are Executives of BSNL having Engineering qualifications and are presently working in different posts of the level of JTO/SDE. They are aggrieved by issue of Notification in September, 2012 by the respondents inviting applications for direct recruitment to the post of DGMs in BSNL.
- Amongst other things, the following eligibility criteria/work experience has been provided in Para 3.3 of the aforesaid Notification:-  
Eligibility Criteria/Work Experience:  
Candidates from Public Sector, Private Sector and Government are eligible to apply. All candidates, however, must fulfill all three criteria mentioned in Recruitment Rules 2008 of Direct Recruitment DGMs of BSNL Management Services issued vide No.314-36/2008-Pers.1 (Pt) dated 25.6.2009 as listed below:
  - (i) Twelve (12) years of post-qualification working experience, as on 01.08.2012.
  - (ii) Minimum 3 years' experience as on 01.08.2012 in E-4 grade as defined in DPE guidelines (IDA pre-revised scale Rs.14500-350-18700/Revised IDA Scale of Rs.29100-54500) in case of PSU experience or equivalent annual gross salary, which comes to approximately Rs.7 lacs gross, in case of private sector or CDA scale of Rs.1000-325-15200 (Pre-revised scale in case of government posts)
  - (iii) Minimum work experience of 5 years, as on 01.08.2012, in a company with an annual turnover more than Rs.100 Cr. (in case of PSU, Private companies).

### **RELIEF SOUGHT**

- To declare the action of respondents in not applying the same criteria for determining eligibility for appointment to the post of DGM under Direct Recruitment quota as prescribed for employees of private companies as illegal and arbitrary.
- To declare the Recruitment Rules (RRs) i.e. Recruitment Rules (2008) of directly recruited DGMs of BSNL Management Service as unconstitutional and ultra vires to the extent Executives of BSNL have not been treated eligible at par with employees of private sector.
- To direct the respondents to declare the applicants/Executives of BSNL as eligible subject to getting annual gross salary approximately Rs.7 Lakhs for appearing in the direct recruitment DGMs exam of BSNL.
- To quash and set aside RR (2008) of directly recruited DGMs of BSNL to the extent the BSNL executives have been made ineligible to appear in DGMs exams/participation in selection process in DGM even after getting salary of approximately Rs.7 Lakhs per annum.

- To direct the respondents to give same advantage of BSNL Service/ACRs etc. to the applicants while deciding their eligibility and finalizing selection to the post of DGM as given to BSNL officials while making appointment to the post of Senior DGM.

### **QUESTION(S) BEFORE THE TRIBUNAL**

- Whether the respondents have the power to notify separate rules for direct recruitment?
- Whether the notification providing for direct recruitment is legally sustainable?
- Whether the applicants' claim that all the posts should be filled up by internal BSNL candidates either by promotion or by direct recruitment is sustainable in law and to what relief if any are the applicants are entitled?

### **CONTENTIONS OF THE APPLICANT**

- The contention of the applicants was that by this Notification the respondents have treated them inferior to the candidates of private sector, thus, depriving them of opportunity to apply for this selection.
- According to the applicants, the action of the respondents in treating the applicants inferior to candidates of private sector was highly illegal and unjustified. Once the applicants fulfilled the criteria of getting gross salary of Rs. 7 Lakhs and 12 years of regular service in Telecom domain they should not be declared ineligible.
- They further contended that thousands of Executives recruited in BSNL not only had basic Engineering qualification but also additional qualification such as ME/M.Tech./MBA. Such Executives had been rendered ineligible to apply for these posts even after putting in 12 years post qualification service in BSNL, simply because BSNL had not given appropriate Executive grade at entry level and career progression at par with other leading PSUs to their own Executives.
- The applicants were of the view that as per existing policy in BSNL, an Executive would require to serve minimum 19 years before he could satisfy eligibility condition of three years regular service in E-4 grade as asked for in the above advertisement.
- Furthermore, executives of BSNL which has a turnover more than 28,000 crores would not be eligible but if they left BSNL and joined a private sector company having a turnover of Rs.100 crores, they would become eligible.
- Outsiders had become eligible with 12 years post qualification experience in any domain whereas Executives of BSNL having experience of Telecom domain did not.
- Many employees of private companies engaged by BSNL on contract basis and serving under the supervision of the applicants were eligible to participate in the said recruitment but the applicants are debarred.
- Relying on the judgement of Apex Court in the case of *N. Abdul Bashir v. K.K. Karunakaran*<sup>13</sup>, the applicants stated that it was held that ordinarily it is for the Government to decide upon the consideration which in its judgment to be underlying factor in policy formulation. However, if the consideration is proved to be of no

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<sup>13</sup> 1989 Supp. (2) SCC 344

relevance to the object sought to be achieved, it is open to the Court to strike it down. They argued that in the case of *UOI v. Hemraj Singh Chauhan*<sup>14</sup>, it was held by the Supreme Court that the right to be considered for promotion is a fundamental right. In the case of *A. Satyanarayana & Ors. v. S. Purshottam Dass & Ors*<sup>15</sup>, it was held that a statutory rule must be in consonance with the constitutional scheme.

## **CONTENTIONS OF THE RESPONDENT**

- The respondents, rebutting the contentions of the applicants stated that BSNL had reserved 150 posts of DGMs for direct recruitment in Telecom Management Services. These were over and above the sanctioned strength of 1800 DGM posts in BSNL Management Services Recruitment Rules, 2009 which were to be filled by promotion.
- The respondents further submitted that this was the second round of recruitment under the direct DGM Recruitment Rules, 2008 for 106 vacancies in Telecom Management Services which were left unfilled in the previous round of recruitment held in 2009-2011. In that recruitment eligible Executives of BSNL had participated and had also succeeded on merits.
- They further stated that the present advertisement for recruitment DGMs was not an internal examination but was open for all with the intention of getting the best managers for the organization from open market.
- The respondents went on to say that the issue raised in the present O.A. had already been adjudicated in earlier rounds of litigation and the Recruitment Rules and Advertisement had been upheld by their Co-ordinate Benches of this Tribunal, namely, Hyderabad, Chennai and this Bench. Moreover, the order dated 06.07.2010 in OA-1044 & 1093 of 2009 of Hyderabad Bench was challenged before the Andhra Pradesh High Court in Writ Petition No. 16753 of 2010, which was dismissed. The issue regarding discrimination vis-a-vis private sector candidates had also been considered and rejected by the High Court in favour of BSNL.
- Relying on the judgment of Apex Court in the case of *State of Andhra Pradesh and anr. v. V. Sadanandam and Ors.*<sup>16</sup>, the respondents stated that it was held that the mode of recruitment and the category from which the recruitment to a service should be made are of matters which are exclusively within the domain of the Executive and it is not for judicial bodies to sit in judgment over the wisdom of the Executive.

## **RELIEF GRANTED**

The Tribunal dismissed the OA without costs.

## **REASONS BEHIND JUDGMENT**

- The Tribunal, relying on the judgment of the A.P. High Court, in W.P. No. 16753/2010 held that The BSNL in order to maintain excellence in its operations

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<sup>14</sup> AIR 2010 SC 1682

<sup>15</sup> (2008) 5 SCC 416

<sup>16</sup> 1989 Supp.(1) SCC 574

could choose its own policy of recruitment for absorbing efficient personnel to face the increasing competition from the private sector. The petitioners had no *locus standi* to contend that the post of DGM had to be filled up only by promotion from the category of DE/Chief Executive Engineer/AGMs.

- The Tribunal was unable to agree with the contention of the petitioners that E4 scale of employees in metropolitan cities like Mumbai and Delhi were performing the same duties and functions on par with the Su-Divisional Engineers who are in E3 scale and working in the rest of the country and prescribing pay scale i.e. E4 grade for PSU employees and not prescribing any pay scale for private sector and prescribing the eligibility criteria for private sector employees basing on the gross salary of Rs. 7 lakhs per annum or working in a company which had turn-over of 100 crores or above irrespective of the salary of the employee was a positive and hostile discrimination of the PSU employees.
- The Tribunal opined that it was for the employer to prescribe the eligibility criteria and the competence of the employer could not be questioned by the petitioners so long as the criteria prescribed was uniform and with the object of absorbing more efficient and talented people for effective functioning of the organization.
- The Tribunal further held that it was not open for the petitioners to contend that there was no nexus between the criteria prescribed and the object sought to be achieved and further there was no force in the contention that the impugned recruitment rules were arbitrary, illegal and discriminatory and violative of Articles 14, 16 and 21 of Constitution of India.

**8. *K.K. Aggarwal v. Chairman, New Delhi Municipal Council***

Principal Bench, New Delhi

November, 2013

**FACTS**

- The applicant, a Physical Education Teacher, working under New Delhi Municipal Council (NDMC), was appointed as Supervisor (Physical Education) vide the recommendations of the DPC held on 14.06.2005.
- Since then he was working in that post till 16.05.2013 when the respondents passed the impugned order, whereby they discharged the applicant from his duties by directing him to hand over the charge to a Shri V.K Sharma.
- The applicant made a representation against that order on 27/28.5.2013 which has not yet been disposed of by the respondent.
- The applicant proceeded on medical leave w.e.f. 17.05.2013 and approached this Tribunal for granting interim relief, which was granted on 11.06.2013 by ordering status quo to be maintained till the next date of hearing. This interim order was vacated on 24.08.2013.

**RELIEF SOUGHT**

To set aside the impugned order dated 16.5.13 whereby the applicant i.e. Sh. K.K. Agarwal, Supervisor (Physical Education) in NP Sr. Sec. School, Gole Market, New Delhi in diverted capacity with immediate effect and to further direct the respondent to retain the applicant as Supervisor (Physical Education) with all consequential benefits.

**QUESTION(S) BEFORE THE TRIBUNAL**

- Whether by order dated 16.05.2013 the respondents have just transferred the post of SPE to a different location?
- Whether it has affected the rights of the applicant?

**CONTENTIONS OF THE APPLICANT**

- The applicant submitted that from the wordings of this order it was clear that the applicant had been divested of his duties as Supervisor (Physical Education) and posted in N.P. Sr. Secondary School implying thereby that he would be performing the duties of PET since there was no post of Supervisor (Physical Education) in that school. On the other hand, the applicant was appointed to the post of Supervisor (Physical Education) after a regular DPC, which was held on 14.06.2005, as according to the recruitment rules for the post of Supervisor (Physical Education) (SPE) the method of recruitment was by promotion from amongst the junior PET.
- The learned counsel for the applicant also submitted that there was only one post of SPE in the NDMC headquarters, which was not disputed by the respondents.

- He also asserted that respondents could also not ask anyone else, more so a junior, to discharge the functions of SPE when the applicant was already occupying that post.
- The learned counsel also argued that this posting order had prejudicially affected the public interest and therefore intervention of this Tribunal would be justified.
- The learned counsel further relied on the decision of the Supreme Court in *N.K. Singh v. Union of India & others*<sup>17</sup>, and the decision of the High Court of Delhi in *Anil Prakash v. Municipal Corporation of Delhi & Anr.*<sup>18</sup>. In *N.K. Singh* (supra), the Supreme Court laid down the criteria to determine under what circumstances a transfer order could be treated as prejudicial to public interest. In *Anil Prakash* (supra) the High Court of Delhi took a view that transferring an officer appointed through a process of selection outside his cadre without any discernible reason visible for taking said decision in truth and reality had the effect of punishing the petitioner.

### **CONTENTIONS OF THE RESPONDENT**

- The respondents submitted that the applicant had refused to accept even the transfer order, as can be seen from the copy of the office order dated 16.05.2013 filed by the respondents and he obtained the copy of the order illegally, which was a misconduct on his part. He had also not been attending duties at N.P. Sr. Sec. School, Gole Market.
- The learned counsel for the respondents also argued that the order dated 16.05.2013 was not a transfer order but a posting order; therefore, his duties had not been changed. He was posted in a diverted capacity and, therefore, no legal right of the applicant had been violated since his status had not changed.
- It was also stated that he submitted a representation against the posting order on 28.05.2013 and without waiting for the disposal of his representation by the competent authority he filed this OA on 07.06.2013. The applicant while questioning the appointment of Mr. V.K. Sharma, as SPE did not array him as a necessary party in this OA.
- The respondents further stated that the impugned order was issued in the interest of the school, students, administration and NDMC and to maintain a workable atmosphere. It was also mentioned that the applicant took charge as SPE in June, 2005 and after that so many times he had been issued warning on account of lackadaisical way of working and negligent attitude towards duty. The warning was issued to the applicant on 18.04.2013. He had been warned and reprimanded for committing serious misconduct and causing embarrassment to the Department. His behaviour bore the colours of insubordination. The period of keeping him under watch as mentioned in the warning dated 18.04.2013 was over on 17.05.2013 and the administration was yet to complete the formalities of strict disciplinary action against the applicant.
- The learned counsel further submitted that due to constraints of space the authorities had decided to shift the office of SPE to N.P. Senior Secondary School, Gole Market,

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<sup>17</sup> JT 1994 (5) SC 298

<sup>18</sup> 141 (2007) DLT 614

New Delhi. With regard to posting of a junior person to function as SPE the learned counsel submitted that, that person has not been given the designation of SPE but will be only assisting the superior officers in the headquarters.

### **RELIEF GRANTED**

The Tribunal allowed the OA, and set aside the impugned order dated 16.05.2013 issued by the respondents whereby the applicant was discharged of his duties. The Tribunal ordered restoration of the applicant's substantive post of SPE with all consequential benefits.

### **REASONS BEHIND JUDGMENT**

- The Tribunal held that the impression sought to be generated by the respondents that the applicant had been posted to N.P. Senior Secondary School, Gole Market, New Delhi by diverting the post of SPE due to shortage of space in the headquarters without reduction in rank or change in duties was not supported by the facts on record. Thus the answer to the first issue was held to be in the negative.
- The Tribunal further held that the respondents decided to move the applicant away from the headquarters because of various complaints against him and unsatisfactory performance to function at N.P. Sr. Sec. School without specifying the duties and posting another officer to discharge the functions of SPE in the headquarters. Thus the transfer of the applicant had the effect of punishment. The Tribunal also agreed with the learned counsel for the applicant that the said transfer order where an officer duly appointed after going through a process of selection was held back to an undefined post and his task entrusted to a person appointed without going through a selection process would come within the definition of prejudicial to public interest as enunciated Supreme Court in *N.K. Singh's* case.

**9. C.K. Dubey v. General Manager, Northern Railway, UOI**

Principal Bench, New Delhi

October, 2013

**FACTS**

- The applicant was due to retire from service of the respondents on 31.08.2011 but a few months before his retirement, major penalty proceedings were initiated against him and consequently he was compulsorily retired from service just eleven days before his retirement vide order dated 19.08.2011.
- The retirement benefits have to be given to the Govt. employee immediately on his retirement but in the present case, the respondents have released the retirement benefits to him after substantial delay as detailed below:-
  1. Gratuity received on 20.7.2012 (after 11 months of retirement).
  2. Pension received on 29.11.2012 (after 15 months of retirement).
  3. Leave encashment received on 20.7.2012 (after 11 months of retirement).
- This OA has therefore, been filed by the applicant against the inaction on the part of the respondents in not granting him the interest on delayed payment of retirement dues, i.e. gratuity, leave encashment and pension.

**RELIEF SOUGHT**

The relief sought in the OA was that the Honble Tribunal may graciously pass an order declaring to the effect that the whole action of the respondents not considering and not granting the interest on the delayed payment of retirement benefits to the applicant is illegal, arbitrary and against the Railway Service Pension Rules, 1993 and consequently pass an order directing the respondents to grant the interest @ 12% p.a. to the applicant on all the retirement benefits from the due date till the date of payment with arrears.

**QUESTION(S) BEFORE THE TRIBUNAL**

Whether interest can be paid on gratuity, leave encashment and pension when the same are granted to the applicant 4 years after his retirement, even though he was compulsorily retired, just 11 days from his retirement date?

**CONTENTIONS OF THE APPLICANT**

- The applicant stated that according to Rule 76 of the Railway Service Pension Rules, 1993 the head of office where the applicant was posted ought to have completed all the pension papers or required formalities within the stipulated period. However, in the case of the Applicant, there was substantial delay in preparation of his pension papers as well as the disbursement of his retrial dues.

- The learned counsel for the applicant relied upon the judgment of the Apex Court in *S.K. Dua v. State of Haryana & Anr*<sup>19</sup>. wherein the appellant retired from service on June 30, 1998, and it was also un-disputed that at the time of retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retirement benefits in accordance with law. Certain charge-sheets/ show cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him, just as in the present case, and the Supreme Court ruled in favour of the appellant.

#### **CONTENTIONS OF THE RESPONDENT**

- The respondents claimed that vigilance enquiries are still pending against the applicant.

#### **RELIEF GRANTED**

The Tribunal was of the opinion that the OA could be disposed of at the admission stage itself without notice to the respondents but with a direction to them to consider the aforesaid representation of the applicant in the light of the rules and judgment relied upon by the applicant or any other relevant instruction, and to dispose of his aforesaid representation dated 21.8.2013 with a reasoned and speaking order at the earliest but in any case within a period of one month from the date of receipt of a certified copy of this order.

#### **REASONS BEHIND JUDGMENT**

- The Tribunal was of the view that the grievance voiced by the applicant was well-founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the applicant may claim benefit of interest on that basis. But even in absence of Statutory Rules, Administrative Instructions or Guidelines, an employee could claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits were not in the nature of bounty is, in our opinion, well-founded and needs no authority in support thereof.

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<sup>19</sup> 2008 (3) SLJ 108

**10. M.L. Sharma & Anr. v. Secretary, Ministry of Health & Family Welfare**

Principal Bench, New Delhi

October, 2013

**FACTS**

- Both the Applicants are working as Sister Grade-II in the Respondent-All India Institute of Medical Sciences (AIIMS) with effect from 1.09.2007 and 01.12.2007 respectively.
- On their request, the Respondents have given them 'No Objection Certificate' for appearing in the entrance examination for admission in Rajasthan University of Health Sciences (University for short) for the M.Sc. Nursing Course, Jaipur.
- The Applicants appeared in the aforesaid entrance examination and qualified for admission for the M.Sc. Nursing Course in the University for the academic year 2013-14. Thereafter, vide their representation dated 02/09/2013, they informed the Respondents about their admission. Simultaneously, they also requested the Vice Chancellor of the University to grant them at least 20 days' time for joining the course on the ground that the Respondents would take time to grant them Study Leave.
- To their utter surprise, the applicants received the impugned Memorandum dated 18.09.2013 whereby, instead of granting them the Study Leave, they were granted extraordinary leave without pay and allowances for a period of 2 years. They immediately made a representation on 19.09.2013 to the competent authority to reconsider the matter and to grant them Study Leave for the aforesaid period of 2 years.
- However, the Respondents did not consider the said representation, and thus the OA was filed.

**RELIEF SOUGHT**

The applicants filed this Original Application seeking a direction to the Respondents to set aside the Memorandum dated 18.09.2013 and to direct them to consider their cases for grant of Study Leave under Rule 50 of the CCS (Leave) Rules, 1972 in order to pursue the aforesaid course in the University for the academic year 2013-14.

**QUESTION(S) BEFORE THE TRIBUNAL**

Whether Study Leave under Rule 50 of CCS (Leave) Rules can be claimed as a matter of right by government officials?

**CONTENTIONS OF THE APPLICANT**

- The applicants stated that if they acquired the higher education, they would be useful in their day to day duties with the Respondents and, therefore, it was in public interest that they were given the Study Leave.

- The applicants argued that the denial of Study Leave to the Applicants was against the provisions contained in Rule 50 (1) of the CCS (Leave) Rules, 1972 which reads as under:-  
(1) Subject to conditions specified in this Chapter, Study Leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialized training in a professional or a technical subject having a direct and close connection with the sphere of his duty.
- The applicants also contended that several other similarly placed persons had been granted Study Leave by the Respondents. In this regard, the applicants produced a copy of the letter of the Respondents dated 23.07.2013 issued to the applicants under Right to Information Act, 2005 wherein they stated that Ms. Krishna Negi, Sister Grade-I, Ms. Parmjeet Kaur, Sister Grade-I and Ms. Deepika Barla, Sister Grade-II all of them working in the Dr. Rajendra Prasad Centre for Ophthalmic Sciences had been granted the Study Leave by the Respondents.
- The applicants finally contended that the denial of Study Leave to the Applicants was arbitrary and illegal particularly in view of the fact that the Respondents themselves had given them 'No Objection Certificate' to take the entrance examination in the University for M.Sc. Nursing Course.

#### **CONTENTIONS OF THE RESPONDENT**

- The respondent stated that the Institute had not certified that the course of study proposed to be undertaken by the Applicants was of definite advantage from the point of view of public interest.

#### **RELIEF GRANTED**

The Tribunal dismissed the OA at the admission stage itself, without notice to the respondents.

#### **REASONS BEHIND JUDGMENT**

- The Tribunal held that Rule 50 of the CCS (Leave) Rules, 1972, on which the Applicants placed reliance stated that the Study Leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialized training in a professional or a technical subject having a direct and close connection with the sphere of his duty. Further, the said rule clearly stated that the Study Leave shall not be granted unless it is certified by the authority competent to grant leave that the proposed course of study or training shall be of definite advantage from the point of view of public interests.
- In the view of the Tribunal, M.Sc. Nursing was not a special course of higher studies. According to the Tribunal, the Post Graduate study in Nursing was a general course available in various Universities. Large numbers of students were pursuing the said course at their own expense. Moreover, such qualified students were available for

employment and if the Institute wanted to employ them, they were easily available. In this case, the Applicants were already employed and earning salary and allowances from the Government. They were far better placed than other students who are unemployed and are from economically poor families who pay the tuition fees and other expenses from their own resources. The Tribunal also observed that the Respondent-Institute had already granted extraordinary leave to the Applicants herein to pursue their M.Sc. Nursing Course from the University which itself was a substantial concession. Therefore, their claim that they should be given the full pay and allowances for the 2 years for which they will be away from the Institute to undertake the said course was totally unjustified.

- The Tribunal also dismissed the other contention by saying that other similarly placed persons had been granted Study Leave was not good and sufficient ground to grant them also the Study Leave so long as their case was not covered by the aforesaid rules.

***11. Rajesh & Ors. v. Secretary, Department of Training & Technical Education***

Principal Bench, New Delhi

November, 2013

**FACTS**

- The applicants were appointed as Instructors of Social Studies in the Department of Training & Technical Education on contract basis in different years i.e. 1987 to 2009. The services of the applicants continued till 2010.
- The respondents initiated process to terminate the services of all the Instructors serving on contract basis in 2010.
- The applicants along with others filed OA Nos.2452/2010, 2473/2010 and 2574/2010. The OAs were allowed vide order dated 20.08.2010 and the respondents were directed to continue the applicants on contract basis allowing the respondents to simultaneously initiate the process of selection, at best within a period of six months from the date of the judgment, further directing that the applicants shall have a right to apply for direct recruitment and on age relaxation, their cases be considered for regular appointment.
- Thereafter, vide order dated 30.07.2012, the respondents passed order directing re-engagement of Instructors on full time contractual basis who are already working except Instructors of Social Studies and IT Primer for the academic session 2012-13. That order further stated that the matter of continuation of services of existing full time contractual Instructors of Social Studies and IT Primer will be conveyed separately in due course of time.
- Being aggrieved by the aforesaid order, the applicants filed OA Nos.2499 and 2529 of 2012. In reply to the OAs, the respondents clarified that the DGE&T, Ministry of Labour issued letter dated 12.04.2012 whereby the subject 'employability skills' having total five topics had been introduced in place of earlier subject 'Social Study'.
- In a clarification dated 1.08.2012 by the DGE&T, it was clarified that retraining of existing Instructors of subject Social Studies appointed on contract basis for 'employability skills' would be undertaken and DGE&T had no objection if these are retrained in various areas covered under the subject 'employability skills' even on their own expenses. In fact, the respondents had even made schedule for imparting such training to the applicants
- After the disposal of the OAs, the department again initiated the process to make fresh appointment of contractual employees in place of applicants. The applicants being aggrieved by such action and the order in the aforesaid OAs, filed a Writ Petition No.6071/2012 and the Delhi High Court finally passed the order in the Writ on 28.01.2013.
- Thereafter, the respondents set up a Committee comprising of three officers namely the Deputy Director as Chairman and Assistant Director and Administrative Officer (Trg) as Members. The Committee held that the applicants were not duly trained.

Therefore, the respondents issued impugned orders dated 20.03.2013 rejecting the prayer of the applicants for continuation of their services.

- Aggrieved by this, the applicants have filed the present OA.

### **RELIEF SOUGHT**

The OA was filed with a prayer to quash the order of the respondents dated 20.03.2012, whereby their services were discontinued, and thereafter directly recruit the applicants by granting them regular appointments.

### **QUESTION(S) BEFORE THE TRIBUNAL**

Whether the dismissal of Instructors employed on contractual basis, to accommodate new Instructors on direct recruitment by the Government was valid in law?

### **CONTENTIONS OF THE APPLICANT**

- The applicants' case was that the respondents did not take into account the orders of the Delhi High Court in Writ Petition No.6071/2012 wherein the High Court had recognized the right of the applicants to continue in service subject to the condition of obtaining training from the Institutes. All the applicants had been trained for one month in the National Institute for Entrepreneurship and Small Business Development (NIESBD) and certified that they had successfully completed MDP on Employability Skills course conducted by the Institute, recognized by the Government of India. Therefore, as the applicants had acquired training, they should be continued in service as per the directions of the High Court.
- Secondly, it was argued that the order dated 20.03.2013 simply stated that the respondents found the applicants not 'duly trained'. No reasoning was assigned as to on what basis they had come to this conclusion despite the certificates produced by the applicants from NIESBD. In its order, the High Court had clearly stated that duly trained would mean those who have obtained training from institutes. Now that the applicants had obtained training in the institute mentioned, the respondents could not deny them continuity of employment.
- Third, it was argued that the Committee ignored the letter dated 8.01.2013 issued by the Ministry of Labour in which it was clearly stated that the existing Instructors would be considered for appointment provided they got the requisite training and even those teachers be considered who got their training in the relevant subject on their own expenses. As a result of this clarification, the applicants spent their own money and underwent training. The applicants had been working for the last 4 to 25 years and mere introduction of one subject and that too after they underwent the requisite training, should not be the basis to discontinue their services all of a sudden.
- On the question of initiation of contempt proceedings against the respondents, the applicants clarified that the said contempt petition was filed on 17.04.2013 and the same was listed before the Honble Court much after that. Therefore, no proceedings in any manner were pending before any Court when the OA was filed.

## **CONTENTIONS OF THE RESPONDENT**

- Respondents in their reply basically took the stand that with the introduction of new subject 'employability skills', the DGE&T had prescribed five topics for which training was necessary from different institutes. However, the applicants had obtained certificates from only one institute.
- Moreover, the government, under the directions of the High Court, constituted a Committee and the Committee found that the applicants were not duly trained. It was also explained that if the government had been keeping teachers who themselves were not eligible to teach the subjects, it would ultimately mean that the students would suffer, which could not be accepted.
- It was also stated that the applicants had suppressed the fact that simultaneously they had filed a contempt petition in the Delhi High Court seeking similar relief and that on the short ground of the principles of res judicata, the OA was liable to be dismissed.
- Moreover, while the minimum qualification for recruitment to 'social studies' was B.A., for the new job content, the minimum qualification was made Bachelor of Business Administration (B.B.A.) with two years' experience in Industry or Institute. However, the government in its instructions dated 12.04.2012, in para 4 (4) (ii) also clarified that the new subjects could also be taught by existing Instructors of Social Studies duly trained in new areas or by guest/ contract faculties till regular appointment is done. The respondents, therefore, undertook training of several of such people. The applicants, however, got this done on their own expenses.

## **RELIEF GRANTED**

The Tribunal allowed the OA, and held the impugned order dated 20.03.2012 as wholly unjustified, and therefore, quashed it. The respondents were directed to reinstate the applicants in service and allow them to continue in service till regular appointment was made to teach the subject 'employability skills'. Moreover, as had already been held by this Tribunal in OA Nos.2452/2010, 2473/2010 and 2574/2010, the applicants would have a right to apply for direct recruitment and on age relaxation, their cases would be considered for regular appointment.

## **REASONS BEHIND JUDGMENT**

- The Tribunal, in its judgment, had perused the minutes of the committee of three officers who had opined that the applicants were not duly trained. The Tribunal found the minutes to be very cryptic and, in fact, did not explain at all the reasons for the Committee to come to this conclusion. The Tribunal therefore, was of the opinion that there seemed to be complete non-application of mind by the Committee on which the respondents had laid so much stress.
- The Tribunal also found that the NIESBD had introduced one month course which was of longer duration than Bangalore and Kolkata and that this course comprised all the five topics as required in government letter dated 12.04.2012. Therefore, the

Tribunal opined that there was no doubt that the applicants had acquired the requisite skills as required in para 4 (4) (iii) of the circular dated 12.04.2012 and as directed by the High Court vide order dated 28.01.2013 while disposing of Writ Petition No.6071/2012. Therefore, the Tribunal saw no grounds for the respondents to discontinue the applicants as Instructors and hire fresh hands as contemplated in their circular dated 9.04.2013.

## ***12. Shweta Tripathi & Anr. v. Chief Secretary, Government of NCT of Delhi***

Principal Bench, New Delhi

September, 2013

### **FACTS**

- The first and second Applicants have been appointed as Welfare Officers on contract basis under the Department of Social Welfare with effect from 25.8.2009 and 14.7.2010 respectively. They are presently posted in Children Home for Girls, Nirmal Chaya Complex, Jail Road, New Delhi.
- Applicant no.1, vide her representation dated 20.06.2012 applied for maternity leave through proper channel expecting her date of delivery as 27.7.2012 but the Respondent rejected it by returning the said representation in original itself on 26.07.2012 but scribbling on it as under:-  
*“R/o with the remarks that the leave is not entitled as per circular dated 14.9.2009. This is not understood why the Superintendent recommending/forwarding the same when the circular has already been issued.”*
- Similarly, Applicant No.2 applied for maternity leave with effect from 15.8.2012 for six months but in her case, the Respondent, vide its order dated 02.11.2012, granted only 12 weeks leave with effect from 15.08.2012 to 06.11.2012.
- The Applicants in this Original Application are two female contract employees working under the Respondent No.2, namely, Department of Women & Child Development. The OA was filed with the grievance that they had been denied the maternity leave admissible to them under the Rules.

### **RELIEF SOUGHT**

The OA has been filed to direct the respondents to extend the benefits of Maternity Benefit Act, 1961 to such muster roll female employees who were in continuous service of the management for three years or more and who fulfilled the conditions set out in section 5 of the Act.

### **QUESTION(S) BEFORE THE TRIBUNAL**

- Whether the female workers in the present case were entitled to maternity benefit?
- If so, what directions were necessary in this regard?

### **CONTENTIONS OF THE APPLICANT**

- The contention of the Applicants was that just because the Applicants were contractual employees in the matter of maternity leave there could not be any discrimination. In this regard, he relied upon the Order of this Tribunal in *Dr. Shipla Sharma v. The Chairman, NDMC and Others*<sup>20</sup>, wherein it was held that merely

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<sup>20</sup> OA No.939/2011

because the respondents would chose to put her on consolidated salary and state it to be a contractual appointment, the fact that she was a woman employee could not be lost sight of and the essential benefits fundamentally dealing with the very basis of human rights of allowing maternity benefit to the woman could not be and ought not to have been ignored.

- The applicants further relied on the judgment of the Supreme Court in *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Another*<sup>21</sup> wherein it had been held that the provisions of the Maternity Benefit Act, 1961 were applicable even to women engaged on casual basis or muster roll basis.
- It was further argued by the applicants' counsel that denying maternity leave to the petitioner merely because she was working on consolidated salary on contract basis was not only illegal but mala fide too. It was further contended that the provisions in International Convention where India is signatory should be read in the contract of the employment. Reference in this regard had been made to the Convention of Elimination of All Forms of Discrimination against Women adopted by the United Nation on 18.12.1979. Accordingly, even casual female workers and female workers employed on daily wage basis were entitled to the benefit of Maternity Benefit Act.

#### **CONTENTIONS OF THE RESPONDENT**

- The Respondents have filed their reply stating that the judgment of this Tribunal in Dr. Shipla Sharma's case (supra) is not applicable in the facts and circumstances of the present case and it is distinguishable. They have stated that the said judgment was passed in respect of the employees working in NDMC, which is an autonomous body, whereas the Applicants are working under the Govt. of NCT of Delhi.
- Further, they have submitted that assuming that maternity leave is applicable to the Applicants, even then they can get only 12 weeks in total as per Section 5(3) of the Maternity Benefit Act, 1961 which provides as under:-  
*"5(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery."*
- They have also submitted that the 'leave terms' to be granted to officers appointed on contract in various posts are governed by the Government of India, Department of Personnel & Training, O.M. No.12016/3/84-Estt.(L) dated the 12th April, 1985. As the aforesaid instructions were applicable for all contractual staff, the Applicants herein were also entitled for Earned Leave as admissible to Central Government servants and Half Pay Leave/commuted leave as admissible to temporary Government servants but the number of days of extraordinary leave would depend upon the respective period of their appointment. Further, according to the Respondents, in condition No.11 of the offer of appointments issued to all contractual Welfare Officers also prescribe the entitlement for Earned Leave, HPL and commuted leave as mentioned in the said Office Memorandum.

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<sup>21</sup> 2000 SCC (L&S) 331

## **RELIEF GRANTED**

The Tribunal allowed the OA with the direction to the Respondents to treat the period of absence of both the Applicants for duty to the extent of 180 days as maternity leave with consequential benefits, in terms of Rule 43 of the CCS (Leave) Rules, 1972. They were also to comply with the aforesaid direction issuing appropriate orders and giving the monetary benefits to the Applicant within a period of 2 months from the date of receipt of a copy of this order.

The Tribunal also found that, while dealing with the request of the Applicant No.1, Mrs. Shweta Tripathi, the Superintendent, Children Home for Girls, Nirmal Chaya Complex, Jail Road, New Delhi was totally arbitrary and unconcerned. She had not even forwarded the application of the Applicant to the competent authority but returned her application in original scribbling on it and finding fault with the officer who forwarded her request. As a result, the said Applicant was forced to approach the Tribunal incurring financial loss. In the case of the second Applicant, the Respondents have allowed only 12 weeks Maternity Leave whereas she was entitled for 180 days. In the above circumstances, the Tribunal also allowed cost of litigation quantified at Rs.5000/- to Applicant No.1 and Rs.2500/- to Applicant No.2 which had to be paid to them within the aforesaid period of 2 months.

## **REASONS BEHIND JUDGMENT**

- The Tribunal was of the view that the statements made by the Respondents in their reply were contradictory. On the one hand, they stated that the contractual employees were governed by Section (5) 3 of the Maternity Act, 1961 according to which the maximum admissible period of maternity leave is 12 weeks. On the other hand, they submitted that the contractual employees were governed by the CCS (Leave) Rules, 1972 with the conditions contained in the DOP&T OM dated 12.4.1985 as amended from time to time.
- The Tribunal held that there was no doubt that the Applicants were covered by the CCS (Leave) Rules, 1972 and the Government of India OM dated 12.4.1985 amended by subsequent OMs dated 5.7.1990 and 12.7.1999 extracted above. It was clear that except what were separately mentioned in the aforesaid OM, all other provisions contained in the Leave Rules were applicable to contract employees. Therefore, Rule 43 of Leave Rules was applicable to contract employees like the Applicants. The said rule reads as under:-  
43. Maternity Leave  
(1) A female Government servant (including an apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of [180 days] from the date of commencement.  
(2) During such period, she shall be paid leave salary equal to the pay drawn immediate before proceeding on leave.  
(3) Maternity leave not exceeding 45 days may also be granted to a female Government servant (irrespective of the number of surviving children) during the

entire service of that female Government servant in case of miscarriage including abortion on production of medical certificate as laid down in Rule 19.

- The Tribunal also considered the judgment of the High Court of Rajasthan in *Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr.*, wherein it was held as under:-

“Merely because the respondents would chose to put her on consolidated salary and state it to be a contractual appointment, the fact that she is a women employee cannot be lost sight of and the essential benefits fundamentally dealing with the very basis of human rights of allowing maternity benefit to the woman cannot be and ought not to have been ignored; and the petitioner ought to have been allowed maternity leave as applied for.”

### ***13. R.K. Meena v. Navodaya Vidyalaya Samiti***

Principal Bench, New Delhi

May, 2013

#### **FACTS**

- The applicant was working as Post-Graduate Teacher (PGT) (History) at Jawahar Navodaya Vidhyalaya. In the year 2010, the respondent Navodaya Vidyalaya Samiti invited applications from the eligible persons in a special recruitment drive for filling up of 15 posts under reserved category (SC-2, ST-13) of Principals in the pay band of Rs.15600-39100 with grade pay of Rs.6600 on direct recruitment. Since the applicant was fully qualified and eligible for appointment as Principal in terms of the said Notification, submitted his application through proper channel.
- The applicant appeared for the written examination and the consequential interview. Though only 3 candidates under ST quota, as against the total vacancies of 13 under ST quota, including the applicant, appeared in the written test and interview, the respondents appointed only 1 person under ST quota.
- As per the merit list published by the respondents he secured 95 marks out of the 200 marks prescribed for the written test and in the interview he was given 8 marks out of 40 marks. In reply to his RTI application, the respondents vide letter dated 05.03.2012 informed that since the applicant not secured the minimum prescribed marks for the selection, his name was not recommended for the DPC and accordingly he was not issued the offer of appointment to the post of Principal.

#### **RELIEF SOUGHT**

The OA was filed with a prayer to direct the respondents to appoint the applicant, as 13 vacancies under ST quota were available and only 3 candidates participated in the selection process and the applicant stood at number 2 in the merit, as per the total marks secured by him.

#### **QUESTION(S) BEFORE THE COURT**

- Whether the respondents can fix qualifying/cut-off marks in the recruitment exam after notification of the advertisement?
- Whether the applicant can be appointed as the Principal, on account of availability of vacancies, even though he did not make the qualifying marks?

#### **CONTENTIONS OF THE APPLICANT**

- The applicant submitted that neither in the advertisement nor in the recruitment rules, was there any mention that the written test as well as interview were qualifying in nature. Hence, both the tests should be used only for the purpose of preparing the merit list of the eligible candidates.

- Further, fixing qualifying marks was also against to the recruitment rules and also to the terms of the advertisement. Once 13 vacancies under ST quota were available and only 3 candidates participated in the selection process and when the applicant stood at No.2 in the merit as per the written test marks, the respondents ought to have appointed the applicant also without resorting to fixing of any cut off marks in the interview.
- It was further submitted that since the respondents did not mention anything about the minimum qualifying marks in the Notification/Advertisement, they could not fix the same thereafter. It amounted to changing the rules after the game had commenced, which was against to the settled principles of law.

### **CONTENTIONS OF THE RESPONDENT**

- The respondents through their counter submitted that the respondents decided to fix the minimum qualifying marks at 50% for general candidates and 45% for SC/ST candidates to be secured separately in written test as well as in interview. The applicant had qualified the written test by securing 95 marks out of 200 marks, i.e., by securing 47.5% of marks in the written test but he secured only 8 marks out of 40 marks, i.e., 20% only in the interview. Since the applicant did not secure the minimum of 45% marks in the interview, his name was not included in the final select list.
- The respondents further submitted that it was the prerogative of the respondents to fill up all the vacancies or not even though required number of candidates were selected in the selection process. No candidate, though selected, had any indefeasible right for appointment. It was further submitted that the applicant knowing fully well that he has to secure the minimum qualifying marks both in the written test as well as in interview, participated therein and hence, estopped from questioning the said method on a subsequent date.
- The respondents also submitted that even if the contention of the applicant that no cut off marks could be fixed in the interview, is accepted, the applicant had not secured the minimum qualifying marks of 45% after adding the interview marks to the marks obtained in the written test. The applicant secured 95 marks in the written test and secured 8 marks in the interview as against the total marks of 200 and 40 respectively. As a result he secured 103 marks out of 240 marks which comes to only 42.91% in total, which is less than the minimum qualifying marks of 45% fixed for the SC/ST candidates. Therefore, the applicant was not entitled for final selection.

### **RELIEF GRANTED**

The Tribunal did not find any merits in the case and dismissed it without costs.

### **REASONS BEHIND JUDGMENT**

- The Tribunal placed reliance on the Supreme Court's verdict in *Yogesh Yadav*, wherein the Court held that although nothing had been mentioned in the advertisement about the mode of selection, etc. but a conscious decision had been

taken by the Selection Committee/DPC to fix the minimum qualifying marks at 50% for general candidates and 45% of SC/ST candidates to be secured separately in written test as well as in interview, it cannot be said that the respondents had changed the criteria of selection in the midstream when there was no such stipulation in that regard in the advertisement.

- Further, it is also not the case of the applicant that any of the candidates, who secured less marks [i.e., the marks obtained by him in the written examination plus the marks obtained in the interview], than him, was selected in view of the `benchmark, fixed by the respondents.
- The Tribunal also relied on *Barot Vijaykumar Balakrishna & Others Vs. Modh Vinaykumar Dasrathlal & Ors.*<sup>22</sup>, where the rules framed under Article 309 of the Constitution governing the selection process for the posts of Assistant Public Prosecutor in the State of Gujrat mandated that there would be minimum qualifying marks each for the written test and the oral interview. In that case, cut off marks for viva voce were not specified in the advertisement. As observed by the Apex Court, in view of that omission, there were only two courses open. One, to carry on with the selection process, and to complete it without fixing any cut off marks for the viva voce, and to prepare the select list on the basis of the aggregate of marks obtained by the candidates in the written test and the viva voce. That would have been clearly wrong, and in violation of the statutory rules governing the selection. The other course was to fix the cut off marks for the viva voce, and to notify the candidates called for interview. This course was adopted by the Commission just two or three days before the interview/viva voce. Having observed that it did not cause any prejudice to the candidates, the Court did not interfere in the selection process.

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<sup>22</sup> (2011) 7 SCC 308

**14. D.K. Sharma v. Secretary, Ministry of Urban Development**

Principal Bench, New Delhi

September, 2013

**FACTS**

- The Applicant was under suspension for the aforesaid period, i.e. 21.4.2005 to 13.4.2006 and thereafter he was facing departmental enquiry proceedings. Ultimately, he was removed from service on 15.3.2011.
- Prior to his suspension, he drew his annual increment on 01.08.2004 and in the normal course, the next increment was due for him on 01.08.2005. Since the Applicant was under suspension during the aforesaid period, he was not granted the said increment.
- By the time, the Applicant was reinstated in service w.e.f. 13.4.2006, on the recommendations of the 6th Pay Commission, the system of uniformity in granting annual increments was introduced w.e.f. 1.12.2006. Therefore, he became entitled to get his next increment w.e.f. 1.7.2006 but the Respondents did not give it. He was given the next increment only with effect from 01.07.2007. Further increments have also been granted to him w.e.f. 01.7.2008, 01.7.2009 and 01.07.2010.
- Thereafter, he remained under deemed suspension w.e.f. 12.08.2010 and as stated earlier, he was removed from service on 15.03.2011. As a result, the same amount of subsistence allowance was continued to be paid to him throughout the period of his suspension. He has, therefore, made a representation on 21.08.2006 followed by reminders dated 30.12.2011 and 23.01.2012. However, vide their letter dated 03.02.2012, the Respondents informed him as under:-  
*“You were awarded major penalty for criminal conduct. As per record of the office, you were paid subsistence allowance during suspension period as per provision contained in Rule 53(1) of FR which was extended by fifty percent. As such you shall not be paid any arrear of any pay and allowances for suspension period since suspension was resulted in major penalty.”*
- The Applicant again made a representation dated 24.2.2012 reiterating his earlier requests and refuting the contentions of the Respondents but they decided the said representation vide its order dated 12.6.2012 once again restricting his pay and allowances paid to him as subsistence allowance during his aforesaid suspension period. He had, therefore, earlier filed OA No.2874/2012 before this Tribunal challenging the aforesaid decision of the Respondents and the same was disposed of on 31.08.2012 (Annexure A-16) directing them to consider his aforesaid representation and to pass appropriate orders within 2 months. It is in pursuance to the aforesaid order, the Respondents have now passed the impugned order dated 23.10.2012 stating that during the period the Applicant remained under suspension, his pay and allowances was restricted to the pay and allowances equal to the subsistence allowance paid to him as admissible under FR 53 and since the period of his suspension was declared as non-duty by the disciplinary authority, his increments

due to him on 01.08.2005 was not granted to him due to non-completion of 12 months of service. However, when he completed 12 months of service w.e.f. 23.7.2006 to 23.7.2007, he was granted the next increment w.e.f. 01.07.2007.

## **RELIEF SOUGHT**

The relief sought by the Applicant against the Respondents in this Original Application is recalculation of the subsistence allowance payable to him during the period of his suspension from 21.4.2005 to 13.4.2006.

## **QUESTION(S) BEFORE THE TRIBUNAL**

- Whether a government official suspended from government service should be allowed to earn his increments due during suspension?
- If yes, what was the amount to be paid to the public servant during the period of said suspension?

## **CONTENTIONS OF THE APPLICANT**

- The applicant submitted that in the later authority of *Balvantrai Ratilal*<sup>23</sup>, where it was indicated that even if there was no express term of suspension in the contract of employment, the employer had power to suspend his employee and it amounted to the issuing of an order to the employee which, because such contract is subsisting, the employee must obey. This showed that the contract of service subsists during the period of suspension and if the contract subsists, even though there is suspension, the employee remains in service and if he remains in service, he is entitled to all benefits of service even though he is not expected to work during the period of suspension.
- Rule 24 of the Financial Hand Book Volume II issued under the authority of the Government of the Uttar Pradesh in Chapter IV Part II provided that an increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a government servant by the Government or by any authority to whom the Government may delegate this power under rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments. As the contract of the service of the petitioner continued even though he was under suspension, the increment should be allowed ordinarily to be drawn unless it is withheld in the manner provided under Rule 25. As it was not the case of the opposite parties that it has been so withheld, the petitioner was entitled to the increments during the pendency of his suspension and the subsistence allowance would be calculated accordingly, it being 1/3<sup>rd</sup> of the pay plus dearness allowance.

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<sup>23</sup> AIR 1968 SC 800

## CONTENTIONS OF RESPONDENT

- The respondents submitted that during the period the Applicant remained under suspension, his pay and allowances was restricted to the pay and allowances equal to the subsistence allowance paid to him as admissible under FR 53 and since the period of his suspension was declared as non-duty by the disciplinary authority, his increments due to him on 01.08.2005 was not granted to him due to non-completion of 12 months of service. However, when he completed 12 months of service w.e.f. 23.7.2006 to 23.7.2007, he was granted the next increment w.e.f. 01.07.2007.
- The respondent cited the Allahabad High Court in *Mritunjai Singh v. State of U.P.*<sup>24</sup>, wherein it was held that suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. Emphasis was laid down on the words 'master is not bound to pay on behalf of the State' and it was said that if the master was not bound to pay during the suspension how could the servant claim that he was entitled to earn his increment during the period of suspension.

## RELIEF GRANTED

The Tribunal allowed the OA and directed the Respondents to grant the applicant the increments during the suspension period with effect from 01.08.2005 and again with effect from 01.07.2006 after the suspension was revoked and to re-calculate his subsistence allowance and his pay and allowances till he was removed from service on 15.3.2011 and to pay the difference within a period of 2 months from the date of receipt of a copy of this order.

## REASONS BEHIND JUDGMENT

- The Tribunal, relying on the judgment in *Balwant Rai Ratilal Patel's* case (supra), and the Hyderabad Bench of this Tribunal in *Saranjit Singh vs. Director, Employment*<sup>25</sup> directed the respondents therein to grant increments to the applicant therein during the period of suspension.
- The Tribunal was of the considered view that had the applicant not been suspended, in the normal course, the respondents themselves would have granted him the next increment on 01.08.2005. But in view of the aforesaid settled position in the matter, just because he was under suspension on that date, the Respondents could not have denied him the increment. Now the question was with regard to his next increment in the year 2006. Admittedly, with the acceptance of the recommendations of the 6<sup>th</sup> Pay Commission, the system of granting annual increments to Government employees had changed. According to the new system, the employees were granted increments either w.e.f. 1<sup>st</sup> January or w.e.f. 1<sup>st</sup> July of every year depending upon the dates on which he/she drew the last increment. For those who were entitled for increment in any of the first six months of the year, the increments were given from the 1<sup>st</sup> January of that year itself. Similarly, in the case of those who were entitled for increment in

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<sup>24</sup> AIR 1971 Alld 214

<sup>25</sup> OA-1056/2011

any months in second half of the year, increments were granted from 1<sup>st</sup> July, of that year. As a result, since the normal date of the increment of the Applicant fell in the 2<sup>nd</sup> half of the year (1<sup>st</sup> August), the Applicant again became entitled for his next increment from 01.07.2006. Therefore, there was no question of completion of duty for 12 months for getting the increment w.e.f. 01.07.2006.

## ***15. Vishwainra Singh v. Revenue Secretary, Ministry of Finance***

Principal Bench, New Delhi

November, 2013

### **FACTS**

- The applicant is working as Inspector, Central Excise and Customs in Grade-B. On 20.11.2012 he was served with a Memorandum by which it was informed that it was proposed to hold an enquiry against him on the charge contained in the Annexure to the Memorandum under Rule-14 of the CCS(CCA) Rules, 1965.
- In the charge, it was alleged that:-  
*“Shri Vishwainder Singh, Inspector while working as Inspector, ICD, Moradabad was involved in registration of Advance licence No. 2910001171 dated 25.10.2000 of a firm M/s R.N. Bhatia, Moradabd. The Advance licence was recommended by him for registration without taking appropriate Bank Guarantee. He, mis-reported that the firm had fulfilled all the conditions for exemption from Bank Guarantee under Boards Circular No. 71/98 dt. 15.09.98 and on the basis of his recommendation the Superintendent recommended for registration of Advance licence and Dy. Commissioner, accepted the Bond without Bank Guarantee and allowed Registration of licence. M/s R.N. Bhatia, Moradabad misused the Advance licence and evaded duty of Rs.31,76,820/- which could not be recovered as there was no Bank Guarantee.”*
- Along with the Memoradum a statement of imputation of misconduct, a list of documents and witnesses relied upon to substantiate the charge were also supplied to him. He was asked to submit a written statement either accepting or denying the charge. It was also mentioned in the Memorandum that an enquiry will be held only in respect of those Articles of Charges which are not admitted by him.
- According to the applicant on receipt of this Memorandum he submitted a detailed representation on 29.11.2012 in which he refuted the allegations made in the Articles of Charge and requested to drop the proceedings. This representation has so far not been decided by the respondents. Consequently, he has approached this Tribunal by filing this O.A.

### **RELIEF SOUGHT**

In view of the above facts and submissions, the applicant prayed that the impugned memorandum bearing C. No.II(8)17-Vig./M-I/12/553, dated 20.11.2012 issued by respondent no.2 in the name of the applicant, may be quashed/declared null and void qua the applicant.

### **QUESTION(S) BEFORE THE TRIBUNAL**

- Whether the Tribunal has jurisdiction to interfere with the Article of Charges at the stage of framing of charges?

- Whether a charge-sheet ought to be quashed on the grounds of unreasonable delay alone?

### **CONTENTIONS OF THE APPLICANT**

- The statement of Article of Charges framed against the applicant was perverse, erroneous and unfounded. It amounted to abuse of the process of law as the charges were ex-facie bad and could not be established in previous enquiry proceedings.
- The charge sheet had been issued after a lapse of 12 years. This was against all norms of natural justice. Some of the defence witnesses had already retired. Other witnesses also would not be able to recall the event properly.
- Enquiry proceedings would cause undue harassment, mental agony to the applicant.
- The applicant had merely forwarded the documents placed in the file by the junior staff to the then Superintendent with the request that the said documents were to be put up for verification and appropriate orders. As such, he had not committed any misconduct. No guidelines, rule or procedure prescribed under the Central Excise Act had been violated by the applicant.
- The applicant was a bonafide government servant who had always been loyal to his department and had never given any chance for complaint to his superiors.
- The allegation of causing loss to the exchequer was solely attributable to the recovery Department when the party as well as surety were both available to make good the losses caused to the Government.
- There was no allegation that the applicant had any nexus with the licensee and was involved in granting any benefit to him in any manner.

### **CONTENTIONS OF THE RESPONDENT**

- The respondents had stated that at this stage of the disciplinary proceedings no grievance or real cause of action was made out. Only charge sheet had been issued and the proceedings would be carried out under the Rules. The applicant would have full and fair opportunity to defend himself at various stages of the proceedings. The procedure also involved consultation with the independent advisory bodies such as the CVC and the UPSC to ensure a fair, objective and dispassionate assessment of the facts and circumstances of the case. Thus, the applicant was not justified in seeking intervention of this Tribunal at this stage of the proceedings.
- Further, they stated that it was trite law that by issuance of notice/memorandum no cause accrued as this could not be construed to be final order. Regarding delay they stated that the delay was neither wilful nor deliberate. The applicant had also not been able to prove any prejudice caused to his defence on account of delay which had occurred for bona fide administrative reasons.
- The respondents also denied that the reply received from the applicant on 29.11.2012 denying all the charges has not been dealt with. They stated that the Disciplinary Authority had decided to appoint an Enquiry Officer to conduct the enquiry in the matter as stipulated under CCS (CCA) Rules, 1965.

- The respondents have also relied on the decisions of the Apex Court in the case of *UOI & Anr. v. Ashok Kacker*<sup>26</sup>; *UOI v. Upender Singh*<sup>27</sup>, *UOI v. Kuni Setty Satyanarayana*<sup>28</sup>, *State of Punjab & Ors. v. Ajit Singh*<sup>29</sup>, and *DIG of Police v. K. Swaminathan*<sup>30</sup>, to state that interference by the Tribunal at this stage is not called for since the applicant will have ample opportunity to defend himself at various stages during the enquiry proceedings.

## RELIEF GRANTED

The Tribunal were not inclined to grant the reliefs asked for by the applicant and thus dismissed the OA without costs.

## REASONS BEHIND JUDGMENT

- In the instant case, we find that the charge made out against the applicant is of serious nature, namely, causing loss to the exchequer by favouring a private party and helping him in getting registration of advance licence for import. Under these circumstances, we feel that it would be in the interest of justice if we refrain from interfering in the matter at this stage and let the applicant face the enquiry and submit his defence before the Enquiry Officer.

- Further, they have relied on the judgment of the Apex Court in the case of *Govt. of A.P. & Ors. v. V. Appalaswamy*<sup>31</sup>, in Para-12 of the which the following has been held:-

So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefor. Each case must be determined on its own facts.

The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

(1) Where by reason of the delay, the employer condoned the lapses on the part of the employee.

(2) Where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the Inquiry Officer.

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<sup>26</sup> 1995 Supp.(1) SCC 180

<sup>27</sup> JT 1994(1) SC 658

<sup>28</sup> 2007(1) SCT 452

<sup>29</sup> 1997(11) SCC 368

<sup>30</sup> 1996(1) SCC 498

<sup>31</sup> (2007) 14 SCC 49

## ***16. Pritam Singh v. Chief Secretary, Government of NCT of Delhi***

Principal Bench, New Delhi

March, 2013

### **FACTS**

- The applicant of this OA was a work-charged regular employee of the respondents posted at ISBT, Kashmere Gate, Delhi as a Pump Operator-II.
- He fell ill and his illness was detected as cancer by the St. Stephens Hospital, after which he was referred to the Dharamshila Hospital, and a long treatment was given to him at the Dharamshila Cancer Hospital and Research Centre. With Gods grace, he recovered from the said illness.
- He then submitted his medical bills totalling to Rs.4,98,164/- to the respondent-authority. The respondent authority, in turn, cleared 80% of those medical bills, by passing the bills in respect of Rs.3,99,744/-, through their orders dated 13.11.2007, 06.12.2007, 28.12.2007, 11.01.2008, 22.01.2008, 11.02.2008 and 07.05.2008.
- However, being dissatisfied with the balance amount of Rs.98,420/- having remained unpaid or un-reimbursed, the applicant earlier came before this Tribunal in OA 67/2011, which was disposed of on 10.01.2011 with the following orders:  
*“In view of the above, we dispose of this OA, at the admission stage itself, by directing the respondents to review the medical claims of the applicant with reference to the rules for re-imburement of medical charges incurred by work-charge regular staff”*
- Since the Tribunal had directed the respondents to review the medical claims of the applicant with reference to the rules for re-imburement of medical charges incurred by him as a work charged regular staff, the applicant expected the respondents to forthwith comply with such order. However, when that did not happen, he filed C.P. No.741/2011 in which order came to be passed on 24.10.2011 alleging disobedience of the order dated 10.01.2011 passed in OA 67/2011 (supra). In the CP, the respondents had filed their reply along with an order dated 10.10.2011, in compliance of the Tribunal’s directions, which was taken on record.
- The Bench on that day felt satisfied with the order passed by the respondent authority on 10.10.2011, and held that no case of contempt is made out. Accordingly, the CP was closed and the notices issued to the respondents were discharged, giving liberty to the applicant that if he is still aggrieved by the order dated 10.10.2011, to challenge the same on the original side, which the applicant has done now.

### **RELIEF SOUGHT**

The following reliefs were sought by the applicant in the OA:

- To set aside and quash the order dated 5.10.2010 and 10.10.2011 passed by the respondents.
- To direct the respondents to reimburse the balance amount Rs.98,420/- + interest Rs.59050/- total Rs.1,57,470.00 to the applicant and grant all consequential benefits.

## QUESTION(S) BEFORE THE TRIBUNAL

Whether the applicant is entitled to re-imburement of the whole amount of the medical bill from the respondents for illness caused due to the prevalent work conditions?

## CONTENTIONS OF THE APPLICANT

- The contention of the applicant in the present OA was that the respondents had stated in the impugned reply that the petitioner was a work-charged regular staff working at the ISBT, Transport Department, GNCT of Delhi, who was transferred from DDA along with ISBT on 05.05.1993 to the GNCT of Delhi. However, the status of the said employee had not yet been decided by the respondents till date, and, therefore, the applicant could not be denied his legitimate demand of medical expenses, at par with the facilities which were being provided to the work-charged staff of the DDA, where he had initially been employed. In support of his contention, the applicant relied upon the judgments in the cases of *State of Punjab v. Mohinder Singh Chawla*<sup>32</sup>, *Narendra Pal Singh v. Union of India*<sup>33</sup>, and *Kishan Chand v. Govt. of NCT of Delhi & Ors.*<sup>34</sup> .
- He had also taken the ground that the claim now being made by him did not arise on account of any actions of his own. The St. Stephens Hospital had actually referred him to the Dharamshila Cancer Hospital for treatment of the special disease of cancer, which was not available at the St. Stephens Hospital, and the respondents were, therefore, duty bound to reimburse his full claim, since he has claimed only the actual amount spent, and not to and fro transport charges, attendants charges etc. He further took the ground that the respondents had nowhere denied that the treatment for the disease of cancer was not available at the St. Stephens Hospital, and that he was properly referred by that Hospital to a specialized Hospital, and, therefore, his medical claim was as per the proper procedure for reimbursement of medical claims.
- Explaining the delay in filing of this OA, he explained the facts regarding his legal notice to the respondents issued through his counsel's letter dated 20.09.2010, which was replied to by the respondents through Annexure A-6 letter dated 05.10.2010, which had formed the basis for him to file OA No.67/2011 (supra), and that this Tribunal had closed C.P.No.741/2011 vide its order dated 24.10.2011 giving liberty to the applicant to challenge the order dated 10.01.2010 on the original side.

## CONTENTIONS OF RESPONDENT

- The respondents had raised a preliminary objection in their reply to the O.A., stating that the applicant had challenged the order passed by the DTIDC, a Govt. Company under the GNCT of Delhi, and the cause of action had arisen on 10.10.2011, when the impugned order was issued. It was further submitted that neither did the applicant hold a civil post, nor was the named company, which had issued the impugned order,

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<sup>32</sup> JT 1997 (1) SC 416

<sup>33</sup> 79 (1999) Delhi Law Times 358

<sup>34</sup> 169 (2010) D.O.T. 32

yet been notified to come under the jurisdiction of this Tribunal. Therefore, it was pleaded that the OA was liable to be rejected for want of jurisdiction.

- Thereafter, they had given the details of the process, which had been undertaken by the respondent authority in admitting the major portion of the claim of medical reimbursement of the applicant.
- It was further submitted that the respondent authority was bound to reimburse the medical claim only according to the existing rules and regulations for the civil servants, but not the full payment as may have been charged by the hospital, and it was denied that the applicant was admitted in the said hospital in any emergency. It was submitted that the payments, as admissible and due, had already been paid to the applicant, treating him as a civil servant, and the reimbursement claims had been paid according to the rules and regulations issued by the Govt. of India/ Govt. of NCT of Delhi.
- The counsel for the respondents also filed a copy of the office order E.O.No.214 dated 12.02.2013, by which the DTIDC had sanctioned a sum of Rs.41,735/- on account of further reimbursement of the balance amount of the medical claim in respect of applicant's treatment, by reconsidering those medical claims once again, by way of an offer for out of Court settlement being made in his favour.

### **RELIEF GRANTED**

The Tribunal dismissed the petition, and was of the view that the applicant could not claim reimbursement in respect of every single rupee, which was charged from him by the Dharamshila Cancer Hospital, and the applicant ought to be satisfied with further amount of Rs.41,700/- sanctioned to him through order dated 12.03.2013.

### **REASONS BEHIND JUDGMENT**

- The Tribunal was of the considered view that when once the Dy. GM, DTIDC, had voluntarily subjected himself to the jurisdiction of this Tribunal at the time of passing of the order in the CP 647/2012 on 24.01.2011, the contention of jurisdiction now being raised at the preliminary stage, that this OA could not be decided by this Tribunal now because the DTIDC had not been notified as one of the Corporations falling under the jurisdiction of this Tribunal, was rejected.
- In this particular case, even though the respondent initially stoutly denied any further claim being due to the applicant after the impugned order dated 10.10.2011, they have now gone through the medical reimbursement claim case of the applicant more carefully, and have determined that he was entitled to the further amount of a sum of Rs.41,700/-, which was sanctioned through order dated 12.03.2013. It does not seem that any issue now survives for a judicial determination.

## ***17. Karam Singh v. Secretary, Ministry of Finance***

Principal Bench, New Delhi

October, 2013

### **FACTS**

- The applicant participated in the departmental promotion examination held on 5, 6 & 8 May, 2009 for the post of Intelligence Officer in the Directorate of Revenue Intelligence and Directorate General of Central Excise Intelligence. As a result of the said examination, he was placed at serial No.3 in the list of qualified candidates.
- However, the respondents denied him appointment to the post of Intelligence Officer taking a view that he belongs to Scheduled Caste category and reservation could not be applied to recruitment by way of the transfer or deputation.

### **RELIEF SOUGHT**

The OA was filed with a view to direct the respondent to appoint him to the post of Intelligence Officer by extending the benefit of reservation to him, as he stood 3<sup>rd</sup> in the Departmental Promotion Examination held by the respondents.

### **QUESTION(S) BEFORE THE TRIBUNAL**

Whether the benefit of reservation could be extended in certain situations in matters of promotion, where a post is filled by transfer or deputation and not by promotion?

### **CONTENTIONS OF THE APPLICANT**

- The applicant relied upon the Order dated 9.8.2011 passed in OA No.434/2010 by the Bangalore Bench of this Tribunal and submitted that in the said case, it had been categorically viewed that the appointment of STA/Steno Grade-II as Intelligence Officer could not be considered as appointment either by way of transfer or deputation and the same was the appointment by way of promotion alone.

### **CONTENTIONS OF THE RESPONDENT**

- It is submitted that the allegations of the applicant were wrong, baseless and categorically denied. The reservation in respect of SC/ST was not applicable to the post of Intelligence Officer, which was to be filled by transfer. As per DOP&AR OM No.36012/7/77-Estt (SCT) dated 21-01-1978, Reservation Policy was not applicable in the instant case. The promotions were being done in the Directorate on the basis of recruitment Rules which are applicable to the Directorate only.
- The respondents further submitted, with respect to the decision of the Bangalore Bench of the CAT, that the same had been challenged before the High Court of Karnataka and Writ Petition is still pending. According to him, the applicant in the said OA had been offered appointment subject to outcome of the Writ Petition. It was

not the case of the respondents that the Order passed by the Tribunal is either stayed or reversed by the High Court.

### **RELIEF GRANTED**

The OA was disposed of with the directions to the respondents to examine the claim of the applicant in view of the Order dated 9.8.2011 (ibid) passed by this Tribunal and take a final view regarding his promotion as expeditiously as possible and in any case within three months from the date of receipt of a certified copy of this order. It was made clear that fate of the present Order and decision taken by the respondents would abide by the outcome of the Writ Petition filed against the Order dated 9.8.2011, pending before the High Court of Karnataka.

### **REASONS BEHIND JUDGMENT**

- The Tribunal agreed with the contention of the respondent, that the post of Intelligence Officer could not filled by promotion, but only through transfer or deputation. The Tribunal was of the considered view that the post of Intelligence Officer was filled up only by way of transfer and there was no Reservation Policy applicable to such method of appointment.
- The Tribunal also agreed with the second contention of the respondent that benefit of a disputed matter could not be extended to the others till the order attains finality. There was no violation of any Article of the Constitution by the department as the matter was subjudice and pending before the High Court of Karnataka. No final verdict had been given in the matter by the High Court.

**18. All India MES Clerical Cadre and Group D Employees Association v. Secretary,  
Ministry of Defence**

Principal Bench, New Delhi

October, 2013

**FACTS**

- the VI Central Pay Commission (VI CPC) in its Report had recommended parity in terms of the hierarchical structure of the office staff in field and secretariat offices upto the level of Assistants and Personal Assistants (PAs) and the said recommendation had been accepted by the Government of India.
- The Office Superintendent (OS) of MES and Stenographers Grade-I were in the pay scale of Rs.5500-9000 as per the recommendation of the V CPC. The Assistants/PAs in the CS/AFHQ were also in this scale. Following the recommendation of the VI CPC they were all placed in the scale of Rs.6500-10500 (pre-revised).
- However, the Government of India, vide OM dated 16.11.2009 upgraded the grade pay of Assistants/PAs in CSS to Rs.4600/- in Pay Band-2, equivalent to Rs.7400-11500 (pre-revised) which was also applicable to the AFHQ, IFS B and Railway Board Secretariat Service and PAs in their counterpart Stenographer Service w.e.f. 01.01.2006. The order also mentioned that one of the reasons due to which Assistants/PAs of CS were being granted grade pay of Rs.4600/- was the fact that there was an element of direct recruitment to the post and that too through an All India Competitive Examination. This upgraded grade pay was, however, not extended to the applicants who are working in the MES Clerical cadre under the Ministry of Defence.

**RELIEF SOUGHT**

This OA was filed by the All India Military Engineering Service (MES) Clerical Cadre and Group-D Employees Association through its President and General Secretary, seeking to redress the alleged anomaly in the grant of pay scale of ministerial staff of MES vis-à-vis pay scale of ministerial staff of Central Secretariat (CS) and Armed Forces Headquarters (AFHQ).

**QUESTION(S) BEFORE THE TRIBUNAL**

Whether non-extension of the benefits of the VI Central Pay Commission to the applicants working in the MES Clerical Cadre in the Ministry of Defence constituted an illegal and arbitrary action, thereby violating the rights of the applicants?

**CONTENTIONS OF THE APPLICANTS**

- The applicants submitted that if at all there was any difference between the duties of the two classes of employees it was loaded towards OS in E-in-C's Branch because apart from discharging supervisory function the MES staff was also liable to be

transferred to far off places in the field and high altitude areas along with the combatants. Further there was a historical parity between the applicants and Assistants/PAs in CS/AFHQ and OS in Railway offices. Through a comparative chart given in the OA, the learned counsel submitted that the applicants and the OS in Railway offices were enjoying a higher scale of pay than the Assistants/PAs in CS/AFHQ in the III CPC

- The counsel of the applicants also contested the other ground, i.e., difference in recruitment process on which the respondents have justified granting of higher scale of the Assistants/PAs in CS/AFHQ. It was submitted that according to the recruitment rules for Assistants/PAs in AFHQ, 50% of the posts were to be filled up by promotion and 50% by direct recruitment through Staff Selection Commission on the basis of competitive examination, provided that in case sufficient number of candidates were not available in a year to fill vacancies to direct recruitment the deficiency would be made up by promotion. Similar direct recruitment component was also there in the grade of Assistants/PAs of CS. In the clerical cadre of MES the post of OS was filled up 100% by promotion. It was contended that the direct recruitment could not be a ground for such discrimination in scales because the higher grade pay was not confined only to the directly recruited employee but was also extended to the promotee component of that grade in CS/AFHQ who are comparable to the applicants in the matter of duties and historical parity.

#### **CONTENTIONS OF THE RESPONDENTS**

- The respondents drew attention to the pronouncements of the Supreme Court with regard to the question relating to pay structure of government employees. He submitted that the prayer made in the present OA was beyond the power of this Tribunal in view of the judgments of the Supreme Court in *Secretary, Finance Department v. West Bengal Registration Service Association*<sup>35</sup>, and *State of West Bengal v. Hari Narayan Bhowal*<sup>36</sup>.
- The respondents further submitted that the question of 'equal pay for equal work' had also been deliberated upon by the Supreme Court in a number of cases and it was held that if the duties, functions and qualifications for recruitment were different from the class of employees with whom parity was claimed, then such employees could not claim such parity. In this connection the learned counsel relied on the decisions of the Supreme Court in *Deb Narayan Shyam v. State of W.B.*<sup>37</sup>, and *State of M.P. v. Ramesh Chandra Bajpai*<sup>38</sup>.
- The respondents further stressed upon the authority of the employer to maintain the differential in the pay scales of different group of employees on the ground of educational qualification, mode and manner of appointment and other factors like nature of work, value thereof, responsibilities, reliability, experience, confidentiality,

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<sup>35</sup> 1993 Supp. (1) SCC 153

<sup>36</sup> (1994) 4 SCC 78

<sup>37</sup> (2005) 2 SCC 286

<sup>38</sup> (2009) 13 SCC 635

functional needs etc. Mere similarity in designation or nature or quantum of work was not determinative of equality in the matter of pay scale. Equality clause could be invoked in the matter of pay scales only when there was wholesale identity between the holders of two posts.

### **RELIEF GRANTED**

The Tribunal directed the respondents to constitute an expert group with appropriate level composition to consider the representations of the applicants in the light of the observations made in the judgment. The expert group shall submit its report within a period of 04 months from the date of receipt of this order. Thereafter the respondents shall take a final decision on the recommendations of the expert group by passing a speaking order, within a further period of 03 months.

### **REASONS BEHIND JUDGMENT**

- The Tribunal found that as an expert body the VI Pay Commission after taking into account all relevant factors to determine the pay scales and the relativity among various categories of staff, as also stressed upon by the respondents, recommended granting identical scales to the applicants and the Assistants/PAs of CS/AFHQ. It was only through the order dated 16.11.2009 that the grade pay of the Assistants/PAs of CS/AFHQ was upgraded on the ground of different duties and an element of direct recruitment through All India Competitive Examination. Nowhere it has been contended by the respondents that these distinctions were of recent origin, arisen subsequent to the recommendations of the VI CPC and, therefore, could not have been taken into account by the VI CPC while making its recommendations. It has also not been contended that the expert body had erred in maintaining traditional parity or relativity among these groups of employees which was sought to be corrected through the order dated 16.11.2009.