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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.1907/2001

New Delhi this the 12th day of December, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Dr. Ajit Kumar Ray
S/o Late Monmohan Ray
R/o D-18, Devnagar
New Delhi-110 005.

....Applicant

(By Sh.A.K.Behera, Advocate)

-versus-

(1) **Union of India**
Through The Secretary
Ministry of Finance
Department of Economic Affairs
(IES Cadre)
North Block
New Delhi.

(2) **Dr.G.R.Saini**
Ex.Economist/E.S.A.
143, Vaishali
Pitampura
Delhi-110034.

(3) **Dr.V.N.Mishra**
Ex-Economist/Adviser
Krishi Apartments
Vikaspuri
New Delhi-110018.

(4) **The Secretary**
Ministry of Agriculture
Department of Agriculture & Cooperation
Krishi Bhavan
New Delhi. Respondents

(By Shri R.N.Singh, Advocate)

O R D E R

Justice V.S.Agarwal:-

Dr.Ajit Kumar Ray, applicant, by virtue of the
present application seeks a direction from this

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Tribunal that respondent No.1 should notify the encadrement of the applicant in Grade-I of Indian Economic Service with all consequential benefits on the basis of the rules, regulations by which Dr.G.R.Saini, a junior and temporary Economist, was encadred in Grade-I of Indian Economic Service in 1983 and a further direction to respondent No.1 to upgrade the applicant in the scale of Rs.22,500-24,400/- from the date his juniors had been so upgraded.

2. Some of the relevant facts are that the applicant had joined the post of Economist in the Directorate of Economics and Statistics (the Directorate) on 10.2.1983. The applicant had been selected against a reserved vacancy meant for the Scheduled Caste candidates. There were two posts of Economists in the Directorate. Out of those, one was a permanent post against which the applicant was appointed and the other was a temporary post. Both the posts had been encadred in the Indian Economic Service in the year 1982. One Dr.G..Saini was holding one post of Economist on temporary basis since 1978. He was encadred in the Indian Economic Service on 30.4.1983. One, Dr.V.N.Mishra was promoted to Grade I of the Indian Economic Service and was posted against one of the two posts.

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3. According to the applicant, the Department of Personnel and Training on 10.11.1980 informed the department of Agriculture & Cooperation that all posts carrying economic functions must be encadred in the Indian Economic Service. It was pointed that the advancement of offices down the line of Indian Economic Service would not get diluted due to encadrement in higher grades. Similar instructions had been issued by the Department of Personnel and Training on 22.5.1979 that no isolated is to be created. If any isolated post is to be created, the avenues for promotion must be ensured. Identical were the instructions of 12.5.1983 from the Indian Economic Service Board that encadrement should be the rule and keeping any post outside the Indian Economic Service should be an exception.

4. Applicant represented on 28.12.1983 against his non-encadrement in the Indian Economic Service and again for his career advancement. He relied upon the Third, Fourth and Fifth Central Pay Commission reports which recommended the encadrement of the isolated posts. Applicant contends that he was appointed against a permanent and reserved post and is senior to Dr.G.R.Saini who has already been encadred on 30.4.1983. Therefore, the applicant has a right to be encadred in the abovesaid service on the basis of these broad facts and the abovesaid reliefs are being claimed.

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5. In the reply filed, the respondents have contested the application filed by the applicant. It has been contended that prior to 1976 there were three posts of Economist. Out of these, two were temporary and one was permanent. In 1976, two posts of Economists fell vacant. One of the posts was reserved for Scheduled Caste category. As per the then prevailing recruitment rules, the posts were to be filled by direct recruitment or transfer on deputation basis. The exact mode of recruitment was to be decided by the Union Public Service Commission. A requisition was sent to the Union Public Service Commission for selecting/nominations for appointment to these vacant posts. In 1978 on the recommendation of the Union Public Service Commission, Dr.G.R.Saini was appointed to the post of Economist. As no suitable candidate against the Scheduled Caste vacancy was available, one post of Economist was kept vacant. A fresh requisition was sent to the Union Public Service Commission on 3.2.1981 and thereafter on 18.3.1982 for nomination of suitable candidates against the reserved vacancy of Scheduled Caste to the post of Economist. In the meantime, in the year 1981, on the recommendation of the Indian Economic Service and ISS Board, the abovesaid two temporary posts of Economists in the Directorate were offered for encadrement in the Indian Economic Service. At that juncture, one post of Economist



was held by Dr.G.R.Saini and the other post was lying vacant. In 1982, the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, intimated that the abovesaid posts of Economist had been encadred in the Indian Economic Service. In this process, the third post of Economist remained as a single isolated post. These two posts of Economist which were encadred in the Indian Economic Service were upgraded as Senior Economist in the year 1991 and redesignated as Adviser by the Department of Economic Affairs.

6. The applicant was appointed to the post of Economist on 10.2.1983 and had to be adjusted against the third post of Economist in the Directorate. On the other hand, Dr.Saini was also appointed much before the applicant. He had been encadred in the Indian Economic Service before the applicant was appointed. The request of the applicant had been rejected on the ground that encadrement at that stage involved inter se seniority and protracted litigation.

7. The learned counsel for the applicant in the first instance urged that the guide-lines on the subject particularly that of the Department of Personnel and Administrative Reforms dated 10.11.1980 clearly reveal that keeping of isolated posts should be an exception and encadrement the

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same should be the rule. Our attention was drawn to the instructions in this regard which read:-

"An illustrative list is enclosed an Annexure I. some of these posts have continued for a very long time and the reason for their non inclusion in these Services is not clear to us. This situation has given rise to parallel cadres in the Departments. The Associations representing these Services have strongly reacted to this situation as posts carrying economic and statistical functions are being filled from outside despite the availability of competent Service officers. This matter was also raised recently in the General Body meeting of the IES Association....

Despite these instructions, a large number of such ex-cadre posts still exist.

3. There has been a long correspondence with the Department of Agriculture for the inclusion of these posts in the IES/ISS but without any success. The reasons usually advanced for non-encadrement are (i) this would severely restrict the field of choice and (ii) chances of advancement of officers down the line would get diluted. Both the arguments do not seem to have such force. The two Services do have enough potential and the best available talent in the country is drawn to these Services through competitive examination held each year by the UPSC. The recruits are given intensive theoretical and practical training, and there is always a fairly wide choice for selection to the particular post. The other argument regarding promotion prospects could be taken care of by augmenting the number of feeder posts from which the promotion quota to the lowest grade of these two Services is to be filled."

We have little hesitation in concluding that the instructions on the subject are, indeed, what has been argued at the Bar, but it is not absolute rule that whenever there is an isolated post, it must be

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encadred. Primarily it is the decision of the administrative Ministry to consider whether the post should be encadred or not. All factors like inter se seniority, prolonged litigation and the nature of the duties have to be taken care of. Unless the decision so taken smacks of any arbitrariness, illegality or any other similar factor, this Tribunal indeed would not be prompted to interfere and give directions. Such reasons like the inter se seniority, prolonged litigation and nature of the duties involved for encadrement of the posts of Economist in the Indian Economic Service have to be taken care of. We find that the reasons cannot be brushed aside.

8. The learned counsel for the applicant further contended that the instructions had been issued by the Department of Personnel and Training of 11.3.1986 (Annexure -V) and one of the questions for consideration was reduction in the number of isolated posts. Once again it was pointed that attempt should be made to reduce the number of isolated posts and for framing the recruitment rules accordingly. The instructions pertaining to isolated posts were:-

"5.9. Instructions have been issued by the Department of Personnel and Training that whenever a new post is



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created, the Ministries should examine if the post could form part of any of the existing organised services, so that recruitment rules need not be framed for that post separately. In spite of these instructions, Ministries/Departments do have number of isolated posts. There are today many Central Services both class I and subordinate services. It should be possible to get a suitable officer from these services to man many of the posts. The above principle should particularly be applicable in respect of isolated posts in certain organisations (say, posts of a Statistician in a scientific organisation or a legal Adviser in a supply organisation etc.) This system will have two advantages:

- a) the Department will be relieved of the bother of having to frame recruitment rules;
- b) since suitable avenues of promotion cannot be assured to the incumbent of isolated posts, and such holders may revert to their parent department for seeking career advancement.

Ministries/Departments may be to examine how many such posts can be brought into the fold of organised service."

Similar is the extract of para 3.12.3 dated 22.5.1979 of the instructions of the Department of Personnel and Training that in case of an isolated posts, it would be desirable to reduce their number and it would be proper to bring those posts in an organised cadre. In the same line is the letter addressed by the Department of Personnel and Administrative Reforms to the Secretary, Department of Agriculture and Cooperation in which the existence of a large number of posts in the Indian Economic Service and Indian Statistical Service which had come up for consideration. The Board had

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decided:-

"...as a working rule, all posts equivalent to Grades I to IV of the IES/ISS carrying economic/statistical functions (other than purely secretariat posts which have been held by IES/ISS officers continuously for a period of three years or more should be straightaway proposed for encadrement in the respective grades of the two Services. The details of other similar posts carrying economic/statistical functions but not held by IES/ISS officers should be collected from the various Ministries etc., and the concerned Secretaries persuaded to offer such posts for encadrement in the IES/ISS. The Boards made it clear that encadrement should be the rule and keeping any post outside IES/ISS an exception. In a case where it is proposed to keep a post outside the IES/ISS, the one should be on the concerned Secretary to establish the grounds for not encadreing the post in the Service."

On the strength of the same, it was highlighted that necessarily a post should be brought in the cadre. We have already in the preceding paragraphs came to a conclusion that there is no statutory right conferred on the decision that the post must be included in the cadre and the relevant facts have to be taken note of. The instructions necessarily can be followed but there are fetters on the powers of the administrative machinery for acting as per the exigencies. We have already noted that we do not find any mala fide in this regard.

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9. It is true that the duties of the applicant seem to be similarly placed as those working in the Indian Economic Service. This had been so stated even by the respondents in their counter reply filed in OA No.303/1989. The parity of duties will not be a ground by itself. The Department has taken care of the totality of facts and came to a conclusion regarding which we have no reason to interfere being the administrative decision.

10. The learned counsel in that event, highlighted that he was senior to Dr.Saini and, therefore, the applicant has a better claim to be encadred in the Indian Economic Service. The fact, however, indicate that Dr.Saini had been recruited in the year 1978 and the post was encadred in the year 1982. The applicant had jointed only on 10.2.1983 when the earlier post had been so encadred. The applicant in this process did not have a right to claim that on the basis of the fact that he is senior to Dr.Saini, he must be appointed. The plea must be taken to be without merit.

11. At this stage, our attention had been further drawn by the respondents to the fact that

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when this matter came up for preliminary hearing, this Tribunal had referred to the letter of 12.5.1994 to indicate that the selection committee had approved the applicant's encadrement in the Indian Economic Service as a departmental candidate. The applicant has placed on record, a copy of the said letter in support of his claim. The learned counsel for the respondents urged that there is no such letter that had been issued. According to the respondents, the letter of 12.5.1994 is a forged one. The applicant thereafter did not have the courage to file a rejoinder to the same. We are pained to observe that the notice was issued when the applicant had not stated the correct facts. When such is the situation, indeed no relief as claimed by the applicant can be granted. This application on merits also fails.

12. The application being without merit must fail and is dismissed. No costs.

V.K. Majotra
(V.K. Majotra)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

/sns/