

(105)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2052 of 2001

New Delhi, this the 15th day of November 2007

**HON'BLE SHRI JUSTICE V.K. BALI, CHAIRMAN
HON'BLE SHRI L.K. JOSHI, VICE CHAIRMAN (A)**

Ajay Kumar Mittal, aged about 33 years
Son of Shri Mooll Chand Mittal,
Resident of 151, Manoranjan Park,
Civil Lines, Saket Road, Meerut.

....Applicant.

(By Advocates : Shri G.D. Gupta, senior counsel along with him
Shri S.K. Gupta)

VERSUS

1. Union of India, through Secretary,
Department of Home Affairs, North Block,
New Delhi.
2. Director Intelligence Bureau,
Central Civil Secretariat,
North Block, New Delhi.
3. Deputy Director (Establishment)
Intelligence Bureau,
'7' East Block, Sector-1 (one),
R.K. Puram, New Delhi.
4. Joint Director Subsidiary,
Intelligence Bureau,
110, Mall Avenue, Lucknow (U.P.) ...Official respondents
5. Shri Santosh Kumar Nair
C/o Deputy Director (E) Intelligence Bureau,
'7' East Block, Sector-1,
R.K. Puram, New Delhi.
6. Shri P. Ram Murthy,
C/o Deputy Director,
Tara Mandal Complex, 7th Floor,
Saifabad, Hyderabad.
7. Shri Dewat Das Sharma
C/o Deputy Director, Intelligence Bureau -2,
Tawi House, Vikram Chowk,
Jammu.

8. Shri Man Mohan Misra
C/o Deputy Director (E) Intelligence Bureau
'7' East Block, Sector-1 (one),
R.K. Puram, New Delhi.
9. Shri A.K. Mandsaurwala
C/o Assistant Director, 24 Manas Road Bhagat Niwas,
Aligarh U.P.
10. Shri Sudeep Chandra
C/o Joint Director, Subsidiary Intelligence Bureau,
110, Mall Avenue, Lucknow U.P.
11. Shri Pradeep K. Verma
C/o Deputy Director (E) Intelligence Bureau,
'7' East Block, Sector-1,
R.K. Puram, New Delhi.
12. Shri Arvind Kumar Nair,
C/o Deputy Director (E) Intelligence Bureau,
'7' East Block, Sector-1,
R.K. Puram, New Delhi.

service effected through
The Deputy Director (Establishment)
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
35, Sardar Patel Marg,
New Delhi.

.....Private Respondents.

(By Advocate : Shri S.M. Arif)

O R D E R

JUSTICE V.K. BALI, CHAIRMAN:

Ajay Kumar Mittal, applicant herein, successfully competed for the post of Assistant Central Intelligence Officer Grade-II (General) (hereinafter referred to as 'ACIO-II/G') pursuant to an advertisement published in the daily newspapers in the year 1985 for 338 vacancies that were available and for which advertisement mentioned above was published. He received an offer of appointment on 11.07.1986 and joined at the office of Assistant

(107)

Director, D.R.T. Centre, Shivpuri (Madhya Pradesh) on 27.7.1986. He underwent training of four and a half months required for final appointment in the service. The applicant, as per the case set up by him in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, was imparted training in 55th Batch and some of his colleagues, who were selected in the same process of appointment and were imparted training in 56th Batch, were promoted to the post of ACIO-I/G on 06.12.1995. The applicant claiming himself to be senior to his counter-parts and yet having not been promoted, made representation for his promotion to the post of ACIO-I/G, which was rejected vide order dated 14.03.1996. The sole question raised in the Original Application as initially filed is as to whether the applicant was senior to his colleagues, who had competed for the posts of ACIO-II/G in the same selection process only because he was imparted training earlier to them. In the additional grounds permitted to be raised by the Tribunal, the applicant claims to be senior to those who were imparted training in 56th batch also on the ground that after training there were written tests which were not the same for all the batches and, therefore, the marks obtained during training could not be added for the purpose of determining the seniority, even if it is to be assumed as canvassed by the respondents that seniority as per rules and instructions was to be governed on the basis of total marks obtained by a candidate in the written test, interview and training. For determining the controversy in issue, as mentioned above, it would be useful to give facts in brevity as may be relevant.

The applicant responded to the advertisement published in daily newspapers in the year 1985 for the post of Sub Inspector in the Ministry of Home Affairs, Government of India. It was mentioned in the advertisement that after passing the written test and interview, the candidates would be selected for the post of Sub Inspector. The applicant, however, received an offer of appointment dated 11.7.1986 and in the said offer of appointment, the post designated was as ASIO-II/G and the department in which the applicant was appointed was mentioned as Intelligence Bureau under the Ministry of Home Affairs, Government of India. It is the case of the applicant that in the offer of appointment, all that has been mentioned with regard to service conditions is that the same would be governed by the relevant service rules and orders passed from time to time. The applicant would have no clue from the advertisement as to under which service rules his service was to be governed. It has thus been pleaded that there was no service rules in the department. The applicant joined the office of Assistant Director, D.R.T. Centre, Shivpuri (Madhya Pradesh) on 27.7.1986 and thereafter, he was required to undergo training of four and a half months. After completing necessary training, he was ordered to be posted to Boarder Subsidiary Intelligence Bureau (J&K) vide order dated 30.12.1986. After joining, he started drawing monthly salary admissible to the post of ACIO-II in the scale of Rs.1640-60-2600-EB-75-2900/- It is then the case of the applicant that direct recruits to the post of ACIO-II/G were sent for training in batches and it has been the rule of precedence of the department that

ACIOs-II of the earlier batches would rank senior to the subsequent batches. This rule of precedence has been maintained since 1st batch to 53rd batch and applicant went for training in 55th batch. On 6.12.1995, 73 ACIO-II/G were promoted as ACIO-I/G. The applicant came to know from the order of promotion that several juniors to him belonging to 56th batch had been promoted to the post of ACIO-I/G by overlooking him. The applicant has inserted in paragraph 4.15 of the Original Application the names of officers who were imparted training in 56th batch. Those eight persons were later impleaded as party-respondents and have been served. Constrained under the situation, the applicant made representation to the Joint Director (E), Intelligence Bureau, Headquarters, Ministry of Home Affairs, Government of India, New Delhi, which was rejected vide order dated 14.03.1996. It is on the facts, as mentioned above, that the applicant has filed this Original Application seeking to quash the impugned order dated 14.03.1996 and in consequence thereof to issue an order or direction to the respondents to circulate the proper seniority list as also to issue order or direction to the respondents to re-fix his seniority and promote him to the post of ACIO-I/G w.e.f. 6.12.1995. The applicant also seeks a direction to be issued to the respondents to prepare the service rules.

2. Pursuant to notice issued by this Tribunal, respondents no. 1 to 4 have filed the counter reply wherein it has, *inter alia*, been pleaded that the Original Application is barred by limitation as the

(110)

applicant was appointed as ACIO-II/G on 29.07.1986 and the seniority list of ACIO-II/G, which included his name, was issued to be circulated amongst IB Headquarters and outstanding units vide Memo No. 2/Seniority(CC)/91(I)-2521-2611 dated 9.12.1991. The seniority list was circulated amongst the concerned officials from time to time and the individuals were supposed to point out discrepancy/omissions, if any, within a period of five weeks. The applicant did not agitate the matter of his seniority at any stage. On merits, it is averred that the applicant was appointed in the Intelligence Bureau in accordance with Intelligence Bureau (Non-gazetted Executive Post) Recruitment Rules, 1982 framed by the President of India in exercise of powers conferred on him under proviso to Article 309 of the Constitution of India. The recruitment/appointment to the posts of ACIO-II/G is made by various modes like direct recruitment, promotion, deputation/transfer. It is then averred that in accordance with the instructions contained in Intelligence Bureau Order No. 5/SO(C)/76/(20) dated 16.2.1979 issued with the concurrence of Ministry of Home Affairs, Department of Personnel and instructions contained in DOP&T, Government of India O.M. No. 22011/7/86-Est.(D) dated 3.7.1986, *inter-se* seniority of direct recruits ACIOs-II/G, who were selected on the basis of the same recruitment/examination, is determined on the basis of the final merit position drawn by taking into account the marks secured in the written examination, interview and training, irrespective of the batches in which they were sent for training and the date of joining of the

individual. It is further the case of the respondents that the relative seniority of the direct recruits and promotees is determined according to rotation of vacancies between direct recruits and promotees based on the quota of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules. *Inter-se* seniority of direct recruit ACIOs-II/G is being assigned in accordance with the general principle of seniority issued by the Government of India vide OM No. 22011/7/86-Est(D) dated 3.7.1986 and order No. 5/SO(C)/76(20) dated 16.2.1979 which provide that *inter-se* seniority of direct recruits of the same examination should be determined on the basis of merit position obtained irrespective of the batch in which training is undertaken. The stand of the applicant that ACIO-II/G of 55th batch should be placed above the ACIO-II/G of 56th batch is refuted as it is not the correct criteria to determine the seniority of direct recruits. The applicant is stated to have secured less marks than those of 56th batch named by the applicant in paragraph 4.15 of the Original Application. The applicant was assigned the seniority according to the total marks obtained by him. In 1986, 338 ACIOs-II/G were directly recruited and to impart training to all those direct recruits in a single batch was not feasible from administrative point of view and convenience. As such, the direct recruits of 1986 were imparted training in batches. The batch in which training was imparted has no relevance in determining *inter-se* seniority of ACIOs-II/G recruited on the basis of the same examination. While doing so, the department had strictly complied with the provisions

of rules/instructions for assigning seniority and inasmuch as the applicant secured less marks, he was rightly placed junior to those who were higher up in the merit list. It is specifically pleaded that the merit was prepared by taking into account the aggregate performance of the candidates in the written test, interview and training and not on the basis of their batches of training or dates of joining, as pleaded by the applicant.

3. The applicant has filed the rejoinder reiterating the stand taken by him in his Original Application. The applicant also moved a Miscellaneous Application seeking to urge additional grounds wherein it has been pleaded that seniority was liable to be determined on batch-wise basis as after training of each batch, a separate written test was held which was different for every batch and further that there could be no basis for adding the marks of training to the common written test and interview and then to prepare the merit list.

4. The respondents have filed supplementary counter reply as well wherein it has been pleaded that the recruitment rules provide the method of recruitment and eligibility for the post under contention but other service conditions like confirmation, seniority, pay fixation etc. are regulated by the government by instructions and the same have force of law. The respondents have also filed reply with regard to additional grounds allowed to be incorporated in the Original Application wherein it has been pleaded that plea raised by the applicant for determination of seniority on the basis

of batch in which the training was undergone on the ground that there were separate written tests for each batch with different question papers is illogical as conducting written test after the training with identical question papers for all the batches would not serve any purpose as training was imparted in batches one after the other and not simultaneously. It is further pleaded that it was not feasible to impart training to all 338 candidates selected for the posts of ACIO-II/G together and, therefore, they were sent for training in batches. The syllabi prescribed for training was the same for all the batches. The written test at the end of training is a part of training course. It is further the case of the respondents that performance in the training is very important as evident from the order dated 16.2.1979 issued by the Ministry of Home Affairs, Department of Personnel & Training, according to which seniority of directly recruited ACIOs-II/G is to be determined by taking into account the marks secured in written examination, interview and the mandatory training.

5. We have heard Shri G.D. Gupta, learned senior counsel representing the applicant and Shri S.M. Arif, learned counsel defending the respondents and with their assistance examined the records of the case.

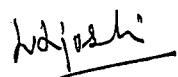
6. We may mention, at the very out set, that even though it may be the case of the applicant that he would not know as to under which service rules his service conditions are governed, the positive case of the respondents not disputed during the course of

argument is that for recruitment to the posts of ACIO-II/G, the service conditions of the employees, such as the applicant, are governed by the Rules i.e., Intelligence Bureau (Non-gazetted Executive Post) Recruitment Rules, 1982 and with regard to seniority, the instructions contained in Intelligence Bureau Order No. 5/SO(C)/76/(20) dated 16.2.1979 issued with the concurrence of Ministry of Home Affairs, Department of Personnel and instructions contained in DOP&T, Government of India O.M. No. 22011/7/86-Est.(D) dated 3.7.1986 govern the field. There is no challenge to the rules and the instructions dealing with determination of seniority. It is also not in dispute that for matters like determination of seniority regarding which statutory rules may be silent the same can be provided or governed by instructions. It is also not in dispute that as per instructions, referred to above, seniority of the candidates, who had gone through the same process of selection in the same examination, was to be assigned in accordance with the aggregate marks obtained by them in the written test, interview and training. It is the positive case of the respondents that written test after training is a part of training itself and this stand taken by the respondents could not be disputed during the course of arguments. On the admitted position of the rules/instructions meant for determining the seniority, as mentioned above, we are of the firm view that contention raised by Mr. Gupta, learned senior counsel representing the applicant, that the earlier batch sent for training would rank senior to the batch sent later for training has to be repelled. Once determination of

seniority is governed by the rules and instructions, the same, unless challenged on some cogent and valid grounds, would govern the field. Once, the method of determining the seniority emanates from the instructions validly issued, it is not for the applicant to prefer a different mode for determining the seniority. That apart, we find nothing wrong in determining the seniority on the basis of overall marks obtained by a candidate, which may include written test, interview and physical training. In fact, the method adopted by the respondents through validly issued instructions appears to be the only right method for determining the seniority. Surely, more meritorious candidates need to be assigned better seniority. Still further, once, as big a batch of 338 candidates was selected in one go, it was not practicable or feasible to impart training to all of them simultaneously and this is what specifically pleaded by the respondents in their counter reply. Mere fact that the candidates sent for training prior in point of time, would not be a good reason to assign seniority to them above those who were sent for training later. Fortuitous situation depending upon facts and circumstances, as may be available, can not be made reason least valid one to assign seniority to one who might have been imparted training earlier in point of time. Equally devoid of merit is the contention of Mr. Gupta, learned senior counsel representing the applicant that no marks for written test after training could be included while preparing the merit list and seniority on the ground that each batch is to take different written test. The syllabi prescribed for training is the same and is based upon the training

only, the written test was conducted. Once the syllabi is the same then different questions put to different batches, which are required to be answered by different batches, would not make any difference. We are of the view that giving the same questionnaire to all the candidates of all the batches may not serve any purpose and in fact, it may be counter productive. If candidates of all the batches are to answer the same questionnaire, they will know well before hand the questions that shall have to be answered by them and that would be an exercise in futility.

7. Having found no merit in this Application, we dismiss the same leaving the parties to bear their own costs.



(L. K JOSHI)
VICE CHAIRMAN (A)



(V.K. BALI)
CHAIRMAN

/ravi/