

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 2200/1999
OA 1434/2000
OA 1506/2000

Date of Decision: 28.8.2001

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OA 2200/99

Shri J.K.Ojha

.....Applicant

OA 1434/2000

Shri R.Kumar

....Applicant

OA 1506/2000

Mrs. Amita Kumar

....Applicant

(By : Shri M.N.Krishnamani, Sr. Counsel with Shri J.K.Dass and Shri C.R.Hatti in OA 2200/99 and with Shri Ajay Tandon in OA 1434/2000 and OA 1506/2000)

Versus

Union of India and others

...Respondents

(By Advocate Shri Madhav Panikar)

Corum:

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? YES/NO

2. Whether it needs to be circulated to other Benches of the Tribunal ? YES/NO

(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2200/1999
O.A. 1434/2000
O.A. 1506/2000

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New Delhi, this the 28th August 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampli, Member (A)

O.A. 2200/99

Shri J.K.Ojha
S/o Shri D.N.Ojha
R/o Sector 13, House No. 186
Block-D, Indira Nagar
Thana Gazipur
Lucknow (UP)
Presently posted as Deputy Commissioner
Special Bureau
Post Box No. 55, Kohima
Nagaland.

...Applicant

(By Shri M.N.Krishnamani, Sr. Advocate with
Shri J.K.Das and C.R.Hati, Advocates)

V E R S U S

1. Union of India
through Secretary (R)
Govt. of India
Cabinet Secretariat
16, Bikaner House Annexe
Shahjahan Road
New Delhi.
2. Joint Secretary SA
Govt. of India
Cabinet Secretariat
16, Bikaner House (Annexe)
Shahjahan Road
New Delhi.

...Respondents

(By Advocate Shri Madhav Panikkar)

O.A. 1434/2000

Mr. R. Kumar
son of Mr. K. H. Ramanathan,
resident of 411, Yojana Vihar,
Delhi-110092nt.

(By Ajay Kumar Tandon, Advocate)

presently working as the Director in the Cabinet
Secretariat,
Room No. 7, Bikaner House Annexe,
Shahjahan Road, New Delhi.

...Applicant

(By Shri M.N. Krishnamani Sr. Advocate
alongwith Sh. Ajay Tandon, Advocate)

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Versus

Union of India
through Secretary (R)
Govt. of India
Cabinet Secretariat,
Room No. 7, Bikaner House Annexe,
Shahjahan Road, New Delhi .
..... Respondents.

(21)

(By Shri Madhav Panikkar, Advocate)

O.A.1506/2000

Mrs. Amita Kumar
Wife of Mr. R. Kumar,
resident of K-12, Andrews Ganj Extension,
New Delhi

Presently working as the Deputy Secretary
in the Cabinet Secretariat, Room No. 7, Bikaner
House Annexe, Shahjahan Road, new Delhi.

(By Shri M.N. Krishnamani, Senior Counsel
along with Sh. Ajay Tandon Advocate)

Versus

Union of India
through Secretary (R)
Govt. of India
Cabinet Secretariat,
Room No. 7, Bikaner House Annexe,
Shahjahan Road, New Delhi .

..... Respondent.

(By Shri Madhav Panikkar, Advocate)

O R D E R

By Hon'ble Shri Govindan S. Iampi, Member (A)

This order disposes of three OAs filed on very similar grounds, challenging the action of the same respondents, denying the applicants, benefit of inclusion of their service in their earlier organisations for computing seniority in their present organisation. They were also heard together.

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2. Shri M.N. Krishnamani Sr. Advocate with S/Shri J.K.Das, C.R.Hati and Ajay Tandon, represented the applicants and Sh. Madhav Panikkar, learned counsel appeared for the respondents.

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3 (i) OA No. 2200/99

Shri J.K.Ojha, the applicant qualified in Civil Service Examination, 1990 (CSE 1990) and was appointed to Indian Railway Traffic Service (IRTS) on 31-12-1991. He joined duties on 12-10-1992. During his probation, in response to an invitation during October-December, 1992, he applied for placement in Research and Analysis Service (RAS) and was selected. He joined RAS on 1-12-1993, a day after his relief from IRTS, and considered the changeover as a continuation, as his selection was through the proper channel and both IRTS and RAS were Group "A" Services under Central Govt. His lien in IRTS was severed immediately following his selection to RAS. He represented against it and wanted to return to IRTS but abandoned the move, as he was advised that it would entail loss of batch seniority and that in case Railways did not take him back, he may lose his job in RAS as well. His representation dated 27-9-1996, for protection of his seniority was rejected on 13-8-1997. His further representation to the Cabinet Secretary was not replied but vide letter No. 3/sps/93 (33)-3320 dated 23-6-1998, he was informed that on consideration, his plea was found inadmissible. Hence this application.

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According to the applicant though he has been performing his tasks satisfactorily, he had legitimately apprehended of being treated in a discriminatory manner in the new organisation which was one of the reasons for his moving the Tribunal. The various grounds enumerated by him as the reasons for his discontent are :-

(i) he stood to lose seniority, making him junior by two years to his own batchmates of 1991, in the event of their joining RAS;

(ii) all those who joined RAS, on lateral entry were given the protection of their past service by amendment in Rules 23 & 24 of Research and Analysis Wing (Recruitment Cadre and Service) Rules, 1975 (the Rules) and subsequently by Rule 26 ibid which was denied to him.

(iii) a few candidates recruited directly to RAS, on the basis of the results of CSE -1990, were given the benefit of service from 1991, though they were much below the applicant in the UPSC merit list, while a few others who were recruited only on account of their being close relations of senior officers of RAW were also given the seniority of 1991, denied to him.

(iv) rejection of his representations was illegal in as much as

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(a) he had been treated wrongly though he joined RAS with a mission fired by the patriotic urges and had hoped in turn that his interests would be safeguarded ;

(b) he did not know about the Recruitment Rules while joining RAS and was now knowing that he could have joined even on a later date without any loss of seniority ;

(c) as he had joined RAS and was not concerned about with particular form of recruitment, he could not have been discriminated ;

(d) as his recruitment was through a proper selection process, respondents were duty bound to protect his interests ;

(v) he has been denied the benefit which his own batchmates would have been given and the amendment to Rule 26 did affect him adversely, as it originally dealt with the case of direct recruits and not those who joined from other services.

(vi) it was wrong for the respondents to have assumed that he had willingly foregone his two years' service for joining RAS as none would have done so knowingly or voluntarily ;

(vii) fairness and transparency in administration demanded re-examination of the issue and restoration of his past service.

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(viii) as his service was continuing from IRTS to RAS, the benefit of inclusion of his past service should have been automatic and he could not have been singled out for denial of the same.

(ix) the benefit of inclusion of past service granted to all others with the change in position w.e.f. 9-7-1997 should have gone to him also, as of right.

(x) he was correctly entitled to the benefits available under Rules 23 (2) & 24 (2) of the Rules and the same should not have been denied ; and

(xi) the respondents cannot take protection behind the shroud of secrecy in which they have been working to the detriment of members of RAS like himself.

In view of the above, the applicant seeks that the impugned order dated 23-6-1998 be set aside and he be extended the benefit of inclusion of his service in IRTS, and he be treated as having joined RAs in 1991 for all purposes including seniority, promotions etc.

3. iii) O.A. No. 1434/2000:

Shri R. Kumar, the applicant who joined Indian Customs & Central Excise Service Group 'A' (ICCES) on 10.12.1984, in the wake of the result of the Civil Services Examination, 1983, was, on the basis of the interview held by Cabinet Sectt. during February 1985 selected to Class I post in that organisation and

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joined duties on 10.3.1986, without any break from his parent service. It was thus a lateral transfer for him from ICCES to Research & Analysis Service (RAS). A few others who joined RAS along with him in 1985, came through an examination, which he was exempted from appearing as he had been already selected to a Central Service Group 'A'. Subsequently knowing that officers of All India Services and Central Services were being inducted laterally with the benefit of their past service which was not granted to him, the applicant protested against it, but could not pursue the same effectively on account of his being posted abroad between 1987-89 and 1995-99. On his return, he submitted a representation on 19.2.1999 seeking redressal of his grievance, but was advised on 22.7.1999 that the request was not tenable. Subsequently, coming to know that one Shri Sanjeev Kumar of Indian Economic Service (IES), of his own batch (1984) was being inducted in RAs with benefit of his past service, through Special Recruitment under Rule 24 of Research and Analysis Wing (RC&S) , Rules, 1975 (Rules) which had been denied to him, he made another representation on 16.12.1999, when he was informed that the matter was under examination. However, on 9.5.2000 he was informed that the representation was rejected. In the meanwhile Sanjiv Kumar was inducted in RAS, with benefit of his past service, thereby making the applicant one year junior though they belonged to the selection of the same year. This situation was to aggravate further with more officers reaching RAS by Special Recruitment at his cost and prejudice. Hence the O.A.

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The grounds agitated by the applicant are that:

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- i) Deptt. of Personnel and Training to which his case was referred to, had indicated that amendment to Rule 24 of Rules relating to Special Recruitment effected in 1989, had adversely affected the applicant and suggested corrective action which the Law Ministry also agreed to, but the same was not adhered to by the respondents ;
- ii) the applicant was subjected to hostile discrimination because he was treated as a direct recruit and denied the benefit of his earlier service while those from his own batch (1984) who joined through Special Recruitment were given the benefit of inclusion of past service, which was violative of equality before law granted by Article 14 of the Constitution and invidious in nature;
- iii) Special recruitment under Rule 24(2) was introduced in 1989, long after the applicant joined RAs and approval of the PM: was obtained without disclosing the fact that the scheme would have adversely affected persons like the applicant who were already in service and was thus against the interests of the incumbents;
- iv) amendment to Rule 26(2) of the Rules effected on 9.7.97, providing for direct recruitment to RAS from amongst those who cleared Civil Service examination, with at least two years of service, also granted the benefit of inclusion of service rendered by them in the earlier service for purposes of seniority and for

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arriving at the year of allotment; a benefit which has been denied to the applicant. Thus both the Special Recruitment of 1989 and the Direct Recruitment of 1997- by amendment to rules 24 & 26 of the Rules gave the benefit to similarly placed individuals but the applicant has been singled out for discriminatory treatment ;

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v) as the individuals like the applicant who have been hit adversely by the two amendments to rules 24 and 26 of the Rules fell into a separate category, relaxation provided under Rule 161 of the Rules should have been exercised in their favour and not doing so was discriminatory and arbitrary. The same was also against all canons of justice and fairness.

vi) even Rule 23 (2) (b) of the Rules which deals with determination of seniority and the year of allotment should go in his favour and his year of allotment be fixed as 1984.

vii) the impugned order being not in consonance with the proper principles of administration was discriminatory and illegal and has been issued in arbitrary exercise of the powers by the respondents.

The applicant in the circumstances prays for the quashing of the impugned order dated 9-5-2000, and issuance of directions to the respondents to treat his year of allotment as 1984, with benefit of inclusion of service between 10.12.1984 and 10.3.1986 for the purposes of seniority and all consequential benefits.

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In the alternative, he prays that amendments made in 1989 to Rule 24 and in 1997 to Rule 26 of the Rules be struck down.

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3. (iii) O.A. No. 1506/2000:

Smt. Amita Kumar's OA No. 1506/2000 is very similar on grounds and pleadings to OA No. 1434/2000, except that she had joined Indian Audit and Accounts Service (IA&AS) on 16.12.1985 on the basis of the CSE.1984. While she was under training as a Probationer she was informed in February 1987 of her Selection to Cabinet Sectt. and was advised to file her resignation from her parent service and obtain relief. However, C&AG's organisation in which she was working, directed on 25.3.1987 that she was not required to resign but that she could be relieved with provision for counting her service, in the new job as well. She was relieved on 31.3.1987 and joined R.A.S. on 1.4.1987. This also was a lateral transfer. Still, in the new organisation she was given the benefit of service only from the year of her joining them. Thus she is similarly placed as Shri R. Kumar. She had also made similar efforts for getting the benefit of her past service, in between her postings abroad. Her attempt in May, 1999, was repelled on 21st July 1999. Her renewed attempts through representation dated 16.12.1999 was ultimately replied on 9.5.2000 stating that her representation was considered carefully, but could not be accepted. Hence this O.A.

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Almost fully adopting the pleas made by applicant in OA 1434/2000, this applicant also prays for quashing of the impugned order dated 9.5.2000; fixation of her year of allocation as 1985 with benefit of inclusion of service from 16.12.1985 to 31.3.1987 for all purposes including seniority. In the alternative the request is to have the amendments ordered in Rules 24 & 26 of the Rules struck down.

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4. Respondents vehemently contest the points raised by the applicants. The grounds urged by them are enumerated as below :-

i) the applications are hit by limitation as the challenge made by them are directed against seniority fixed as far back as in 1986 and 1991 and amendment to the Rules made in 1989 and 1997, while the OAs have been filed only in 1999 & 2000.

ii) it was wrong for the applicants to state that the recruitment process was covered in a shroud of secrecy as the applicants were fully aware of the rules as the Rule Book had been circulated and the applicants been told that they were selected only for the batches in which they had been placed i.e. 1993, 1986 & 1985 respectively. That being the case the applicants' presumption that their posting to RAS was by way of "lateral transfer or changeover" was baseless. The same was also contrary to the established procedure for appointment on direct recruitment.

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(iii) direct recruits like the applicants are entitled to have the benefits of their earlier service only for the purposes of pension and any claim to the contrary cannot be entertained as enforceable.

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(iv) recruitment to RAS was made by the Selection Board set up for the purpose by the Cabinet Sectt. and the said selection is exempt from the purview of the UPSC. Therefore, the merit position if any obtained by the applicants in the CSE held by UPSC has no hearing on the selection in RAS either for the purpose of determining the year of allocation of the applicant or for fixing the relative seniority of the candidates selected.

(v) exemption granted to Shri Ojha (OA 2200/99) from the Foundation Course or those allowed to Shri Kumar (OA 1434/2000) and Smt. Kumar (OA 1506/2000) from taking the selection test were only meant to avoid repetition of excercises and were not intended at extending any further benefits.

(vi) applicants had joined RAs with their eyes open and with full knowledge of their position in the new organisation and are estopped from making any claims which did not go with the terms of appointment.

(vii) Special Recruitment Scheme was introduced in 1989 to obviate the vacuum which was likely to arise at the senior levels because direct recruitment to RAS had been stopped between 1978-84, by selecting from those who were already on deputation or who were to be taken on deputation at the appropriate levels. This

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did not adversely affect the seniority of the applicants who were direct recruits in 1993, 1986 and 1987 and were governed by different rules. Special Recruitment Scheme had also taken care of the interests of all the serving individuals.

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(viii) at the time of the selection of the applicants to RAs, rules did not provide for grant of weightage of any past service to direct recruits. This position changed only with the amendment to Rule 26 of the Rules ordered in 1997. The same cannot be invoked with retrospective effect in favour of the applicants.

(ix) as at the time of selection of the applicants, there was no provision for induction to RAS without loss of seniority and the seniority of the applicants had to be accordingly governed. There was nothing irregular or illegal about the arrangement.

(x) the representation of the applicants had been duly considered and they were also permitted to meet with the Head of the Organisation before the decision to reject their representations was taken.

(xi) As the applicants in OAs 1434 & 1506/2001 were aware of the proposal for lateral induction of RAS under the Special Recruitment Scheme, as early as in 1987 and inductions were to be made between 1974 and 1984 batches and as they had applied for the positions in RAS after considering the prospects of their own parent services and knowing fully well that they were to get the benefit of inclusion of service only from the year in which joined the RAS, they cannot protest

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against the same on a later day as they had done. They are also incorrect in comparing their cases with those of S/Shri Sanjeev Kumar and Y.C.Modi who joined through special recruitment. Applicant Shri Kumar had unfavourably and incorrectly compared the Indian Economic Service with Indian Customs and Central Excise Service only to project his own case without producing any evidence to substantiate the same. Lateral induction into in RAS under Special Recruitment Scheme was specifically approved to meet the senior level manpower requirements of the service by selecting officers of requisite seniority having experience in various functional aspects of the organisation.

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(xii) The applicants were not selected on the sole basis of their being members of Group A Services, which was one of the source to draw candidates from but only after considering their cases along with other eligible candidates, some of whom did not belong to any service. Having joined RA&W with open eyes and knowing fully well that no benefits of previous service will be available to him their present claims for refixation of seniority on the basis of past service was not correct.

(xiii) As the lateral induction in RAS under Special Recruitment Scheme ceased to be operative w.e.f. 18.1.2000, the applicants' apprehension about further loss of their seniority is without any basis. Even in All India/ Group A Services when officers appear for subsequent examinations and opt for joining the new service they are not given any benefit of the past

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service except for the purpose of pension. On the same analogy, the applicants cannot claim seniority on the basis of their service in their earlier organisation like IRTS (in the case of Ojha), IC&CES (in the case of Shri Kumar) and IA&AS (in the case of Smt. Kumar).

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(xiv) it is true that DoPT, when consulted by the respondents with reference to the case of Kumar, had indicated that amendment made to Rule 24 had adversely affected Kumar's interest and was likely to place him below his natural juniors, which was invidious and therefore suggested re-consideration of the issues, Law Ministry, on the other had advised the incorporation of a suitable provision in the rules, to deal with all such cases, with retrospective effect, if necessary. DoPT's opinion was based on the UPSC merit list ignoring the fact that this was not the criterion for selection or placement of those directly recruited to RAS and this stand was endorsed by the Law Ministry who were concerned about the career prospects of those who were recruited along with Kumar and placed above him in 1985 batch and who had not been impleaded in the examination by DoPT.

(xv) opinions from other organisations are taken to have a wider perspective on various issues but were not binding on the organisation seeking them, who can take their own decision.

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(xvi) lateral induction through Special Recruitment and direct recruitment can not be compared and the applicants who had joined RAS as direct recruits, after resigning from ICES and IA&AS respectively were aware that their previous service could not be computed for the purpose of seniority in R.A.S., as these are not comparable in nature and therefore the alleged violation of Article 14 of Constitution had not taken place. The applicants are only attempting to gain inadmissible advantage over their seniors.

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(xvii) Government had approved Special Recruitment of 32 officers in relaxation of rule 24 of the Rules which provided that all senior scale posts were to be filled up only by promotion. This rule was subsequently amended to incorporate Rule 24(3) for making lateral induction upto 10% cadre strength from those who fulfilled eligibility conditions. The applicants have not at all been hurt by this in any manner and lateral induction of Sanjeev Kumar was in no way related to Rule 24 or its amendment.

(xviii) It was also not necessary to inform the Government about the position of the applicants who joined in 1985-86 , while seeking the approval of the Govt. for the Special Recruitment for 74-84 was obtained in 1988. Further Special Recruitment was not resorted as a routine phenomenon but was a feature meant to ensure the proper growth of RAS, which cannot in any way, be termed unconstitutional.

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5. Further, the modification of procedure for Direct Recruitment to RAS in 1997, by induction of confirmed serving officers of All India/Central Group 'A' Services has nothing to do with the seniority of the applicants who were directly recruited in 1993, 1985 and 1986 and seeking seniority of 1991, 1984 and 1985 respectively. Amendments made in Rules 24 and 26 of the Rules were approved by the Government for meeting the functional requirements of the organisation and they do not affect the concerned applicants, as they have been assigned the correct seniority in terms and conditions of their appointment in RAS. Therefore invoking the power of relaxation under Rule 161 only for the sake of the applicants will be unjust to those who were part of the same selection and placed above them in the merit list. Special Recruitments ordered after 1989 do not at all violate the fundamental rights of the applicants as their case is different. As rule 23(2) of the Rules relates to inter se seniority of the members of RAS in each grade at the initial constitution of the service, the applicants who joined much later cannot invoke it for their benefit. Their seniority was determined by the year in which they were recruited and their placement in the order of merit in the select list. Therefore they cannot seek or be given seniority other than what they have been given, especially as they have enjoyed all the benefits of the service. The pleadings made by the applicants are clear distortion of facts indulged in by the applicants to gain undeserved benefits. The applications in the circumstances, deserved to be rejected, argue the respondents.

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6. In their detailed rejoinders, the applicants strongly refute the averments in the counter affidavits filed by the respondents and reiterate their pleas made in the OAs. According to them the respondents are continuing to take shelter behind the veil of secrecy which surrounds the service conditions in the respondents' organisation which had placed them at an advantage to deal with those like the applicants, in any manner they liked. What was given to those who joined the service at the initial constitution of RAS or those who came in through Special Recruitment in 1989 or those who have joined RAS after amendment to Rule 26 of the Rules in 1997, has been denied to a few like the applicants, in clear violation of the rights guaranteed in Articles 14 & 16 of the Constitution. Merely because the applicants happened to be direct recruits during the period when they were recruited, they were being singled out for discriminatory treatment by being asked to totally forego their past services for nothing in return. This calls for intervention by the Tribunal, to render them justice, urge the applicants.

7. During the oral submissions, Shri M.N. Krishnamani, Learned Sr. Counsel along with S/Shri J.K.Das, C.R.Hati and Ajay Tandon, forcefully reiterated the pleas raised by the applicants and averred that the respondents had taken full advantage of the cover of secrecy which they have always been maintaining in respect of recruitment, postings and transfers in RAS, to deny the benefit of the correct service and seniority to the applicants. This is totally against the principles of natural justice,

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equality before the law and equality of opportunities and fair minded administration. All those who were recruited to the RAS at the institution of the service by secondment from other services i.e. much before all the applicants joined the RAS and all those who were brought in through the Special Recruitment in 1989 by relaxation of Rule 24, after the applicants in OAs 1434 & 1506/2000 joined RAS were granted benefit of inclusion of their service from the date of their initial appointment in their parent service. This was made applicable to those who were brought in as direct recruits after amendment in the Recruitment Rules in 1997, after the applicant in OA 2200/99 joined RAS. Thus the applicants remained the small minority of persons who have been discriminated vis-a-vis others in the organisation. The Learned Counsel also placed before us a statement showing the order of allotment of officers including the applicants who have joined RAS either from All India Services or Central Services Group 'A', which, he said would adequately prove his point that the applicants had been discriminated against. It is evident that all the applicants have been made to forfeit two years of service, they had already put in Group 'A' service like IRTS (Ojha) ICCES (Kumar) and IA&AS (Smt.Kumar). Merely on account of the conditions imposed in the offers of appointment, the applicants could not have been deemed as having given up their fundamental right to equality before the law or equal opportunity enshrined in Article 14 and 16 of the Constitution. The decision of the Hon'ble Apex Court in the case of Olga Tellis Vs. Bombay Municipal Corporation [AIR 1986 SC 180], Basheshwar Nath Vs. CIT, [AIR 1999 49] and Behram

Khurshed Pesikaka Vs State of Bombay [AIR 1955SC 123] supported his case. The condition in the appointment orders if any, which is against the fundamental right guaranteed, cannot be endorsed, according to learned counsel. He also countered the objection raised by the respondents on limitation that the same had no basis as the applicants have chosen to challenge the rules when they in fact affected them adversely. Merely because the challenge was not made immediately after the promulgation of amendment to the Rules the applicants' case would not be hurt, as they were unaware of the changes being brought in the system, account of their being away from India on posting. The learned counsel also invited our attention to the decision of the Hon'ble Supreme Court in Mithu Vs State of Punjab [AIR 1983 SC 473] wherein Section 303 of Indian Penal Code was struck down more than hundred years after its legislation and the plea of limitation did not lie. Learned Senior counsel also stated that the applicant in OA 2200/99, had desired to go back to his parent service, IRTs, but was only dissuaded from doing it, fearing loss of seniority and loss of job in RAS. Therefore, to state that the applicants had totally accepted the terms and conditions of RAS was against the facts. Learned counsel also referred to the decision of the Hon'ble Apex Court in State of Mysore Vs. Jairam (AIR 1968 SC 346) holding against the consideration of the claims of inferior candidate, above those of person with higher ranks, which had occurred in Ojha's case.

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8. On the other hand, Shri Madhav Panikkar learned counsel for the respondents stated that these applicants, having joined RAS with their eyes open and with full knowledge of the terms of terms and conditions of the service, have to abide by the rules and have to forego the benefit of the previous service as they have chosen to join the highly prestigious service of RAS keeping in mind its importance and significance in the nations bureaucracy. They cannot ask for anything more than what was originally provided for. It is the price they have to pay for selection to this service. He stated that once an individual has joined the service, he does not have any indefeasible for promotion or other benefits and have to wait for their turn and cannot ask for any inadmissible benefits as the applicants have chosen to do in these OAs. According to him, the decision of the respondents is fortified by the Supreme Court pronouncements in the cases of State of J&K Vs. Shiv Ram and Ors. [1999 3 SCC 653], Director Lift Irrigation Corpn. Ltd. Vs Pravat Kiran Mohanty & Ors [JT 1991 (1) SC 430], Union of India and Ors Vs. S.L. Dutta & Anr. [1991 SC 363] and Dev Rai Gupta Vs State of Punjab & Ors [JT 2001(4) SC 82]. The counsel averred that it was for the Government to change the policy dealing with recruitments, postings etc. and even if it adversely affected one or two individuals there was no reason for them to assail the same, as it was in the interest of the common good. The same cannot in any way, be construed as any violation of the fundamental rights. He further points out that having joined a highly prestigious service and having enjoyed the benefits which went with the service, it

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did not lie in the mouth of the applicants to decry the service. The applicants have to agree to abide by the terms of the chosen service, instead of raising any grievance against it. The applications, therefore, deserved to be set aside, urges Shri Panikkar.

9. We have given careful and anxious deliberation on the various points raised in the rival contentions and have perused the documents brought on record. The preliminary objection raised on behalf of the respondents against the maintainability of these applications is that they are hit by limitation as the amendment to rules are sought to be challenged long after they have been promulgated and come into force. On the other hand, the applicants state that on account of the peculiar circumstances of their services, they could not file the applications earlier as they had been kept unaware of the changes which have been brought about in the service conditions. However, as soon as they became aware of the same and soon after they returned from their postings abroad, they had represented against the reported moves in the organisation which were likely to affect their service conditions adversely. The same have been repelled by the impugned orders, issued in 1998 in the case of the applicant in OA 2200/99 and in May 2000 in the case of the applicants in OAs 1434 and 1506/2000. Even otherwise, as the amendment to the rules infringed upon their fundamental rights, especially those enshrined in Articles 14 and 16 of the Constitution, challenge against them could be raised even on subsequent dates as has been laid down in a number of

various judicial pronouncements including those of the Hon'ble Apex Court. We are convinced that the applicants have a case on this point. What is being attempted is the denial of the applicants' right for equality before law and equal protection of laws granted by the Article 14 and equality of opportunity in matters of employment provided by Article 16, on the mere plea of limitation which cannot be sustained. Our findings in this regard gain support from the decisions of Hon'ble Supreme Court in the cases of Olga Tellis Vs Bombay Municipal Corporation, Basheshar Nath Vs Commissioner of Income Tax and Behram Khurshed Pesikaka Vs State of Bombay (Supra) holding that the "fundamental rights, though primarily meant for the benefit of the individuals have been put into our Constitution on the grounds of public policy and in pursuance of the objectives declared in the Constitution and that none of them can be waived. Plea of limitation, therefore, cannot be permitted to defeat the just cause of these applicants. It is further seen that the applicants in OAs 1434 and 1506 had, during their assignments abroad given an undertaking each, not to take any action including litigation in India or abroad that could lead to disclosure, directly or indirectly about the nature of their assignment. Both the applicants were also abroad for two spells during the relevant period and they could not have, by the very nature of their assignments, filed these applications earlier. On this ground also the objection raised by the respondents on the ground of limitation, falls to the ground.

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10. Coming to the merits, the facts are undisputed.

Shri J.K.Ojha, the applicant in OA 2200/99 who originally joined IRTS in 1991 on the basis of Civil Services Examination, 1990, came as direct recruit to RAS in 1993. He has been denied the benefit of inclusion of his service from 1991 to 1993 for purposes of seniority, which he claims in the OA. Respondents take the plea that as he had joined the service being fully aware of the conditions and that he was recruited only for 1993 batch of RAS, he cannot seek anything more than what has been given to him. Changes, if any, brought out by the organisation in the service conditions, even if they are against his interests would have to be accepted by him as legitimate exercise of authority by the respondents.

11. Similar are the positions relating to Shri R.Kumar, applicant in OA 1434/2000 and Smt. A.Kumar applicant in OA 1506/2000, who have joined ICCES and IA&AS respectively on the basis of the Central Services Examination 1983 and 1984 and came over to RAS as direct recruits while they were still probationers and have been assigned the seniority of 1985 and 1986 as against 1984 and 1985 which they now claim.

12. It is seen that the Offer of appointment No.2/24/93-DO-II dated 3-9-1993 issued to the applicant Shri J.K.Ojha enumerates a few conditions. Two of the relevant conditions are as follows :-



"(6) It should be clearly understood that your appointment is subject to any change in the Constitution of Group 'A' service of the Cabinet Secretariat which the Union Government may think proper to make from time to time and that you will have no claim for compensation in consequence of any such changes.

(ii) If you are already employed in the Govt. service, you will be required to resign from the post before you take up the appointment with us. It is also clarified that the service rendered by you previously in any post under the Govt. or otherwise will not count towards your seniority or promotion but could count towards your pension, if otherwise permissible".

Letter No. 2/31/84 DO-II/504 dated 27.1.86 issued to Shri R. Kumar states that he has been offered the appointment in a Class-I post in the Cabinet Secretariat on the basis of interview held by the Cabinet Secretariat. Clause No. (ix) (a) of the relevant offer reads as below :

"You will be subject to such further or other conditions and rules of conduct as may be framed from time to time and made applicable to the service by the Central Government."

Offer of appointment , issued to Smt. A. Kumar, vide letter No. II-129/86/DO-II dated 6.2.87, also contains the same clause (ix) (a). This letter has an additional clause at (ix) (g) which states as below:

"If you are already employed in the Government service, you will be required to resign from the post before you take up the appointment with us. It is also clarified that the service rendered by you in your previous post will not count towards your seniority or promotion but could count towards your pension, if otherwise admissible". (This condition as would be noted was in the offer of appointment issued to Ojha also.)

13. The respondents are seeking to tie down the applicants to the above conditions in the respective offers of appointment. The respondents hold that having agreed to fully abide by the above terms and conditions, at the time of joining this prestigious service, the applicants are deemed to have accepted everything which went with the new service - RAS - both positive and otherwise and have voluntarily given up all claims whatsoever they had with regard to their earlier services. This does not stand to reason. Admittedly, RAS is also a Group; 'A' Service under the Central Government like any other All India Service or Central Services Group 'A' including IA & AS, IRTS, ICCES wherefrom the applicants came over to RAS on selection. Inspite of their averments during the oral submission to the contrary, the respondents have not been able to show in any acceptable manner that RAS was a superior service, providing better facilities, greater responsibilities or prestige in comparison to All India Services or other Central Services Group 'A' so as to persuade officers from those services to sacrifice or forfeit the benefits in their own service to join RAS. Till that is proved, we have to treat the movement of officers from one Group 'A' Service to RAS, even if described as a direct recruitment, only as a lateral movement. All the three applicants have moved over from their earlier services to RAS - Ojha from IRTS, Kumar from ICCES & Smt. Kumar from IA&AS - immediately following their reliefs, as if the process was a continuous one. Further, these are not cases where the movements are from lower level posts to higher level posts facilitated by technical resignations enabling the

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concerned individuals to have the benefits of the past services only for the purpose of pension but are movements from three Group 'A' services to RAS, all of which are on the same grades and carry the same scales of pay. It is also seen that while Ojha has been exempted from undergoing the Foundational Course, Kumar and Smt. Kumar have been exempted from taking the selection test held by the Cabinet Secretariat for direct recruitment, obviously as they were already in Group 'A' Services to which they have been selected by the UPSC and in which they have been undergoing Probationers' Training. In the above scenario, the averments by the respondents that nothing further be read into the exemptions granted other than avoidance of repeat exercises and that the relative position, the applicants have achieved on the basis of CCS Examinations of 1990, 1983 and 1984 have no bearing whatsoever in determining their seniority and the UPSC's earlier selection had no nexus with selection to RAS do not appeal to reason. Nor can it be upheld as correct. Obviously these applicants have acquired a vested rights in their earlier services - IRTS - ICCES and IA&AS - and those rights which are based on equality before law and equal opportunity for employment granted respectively under Articles 14 and 16 of the Constitution, cannot be considered to have been bartered away by the applicants by their acceptance of the offer in the above appointment letters. All averments to the contrary, are fallacious and would have to be rejected out right.

14. We have also perused R&AW (RC&S) Rules, 1975 (Rules). In terms of Rule 21, at the time of the initial constitution of the initial constitution of the Service, selection to the service was made from amongst the officers of All India Services/Officers of Central Services Class I/Commissioned Officers or Released Officers of the Defence Forces and Officers of the State Services eligible for appointment to the equivalent posts in the Govt. Rule 22 refers to conditions of eligibility. Rule 23 deals with the determination of inter se seniority of the members of the service. Relevant portions of the said rule read as under:

"1) the inter-se seniority of the members of the members of the Service in each grade shall be determined by fixing a year of allotment for each of them.

2) The year of allotment will be determined as follows:

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(b) In the case of officers belonging to other All India services and Central Services Class I recruitment, to which is made through competitive examination, their year of allotment in the Research and Analysis Service shall be the year of their allotment in the service to which they belonged immediately before their absorption in the Research and Analysis Service, or if there is no year of allotment, the year in which the officer joined the Class I Service.

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(e) The year of allotment of officers who have already been recruited to the Junior scale at the time of the initial constitution of the Service will be the year in which they were so recruited. Their inter-se seniority will be as determined by the Selection Board at the time of their recruitment. (emphasis added)

15. Rule 24 deals with the maintenance of the service as well as with the Special Recruitment and the year of placement of those who have joined through such recruitment.

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16. Perusal of the above makes it clear that all those persons who joined RAS at the time of its initial constitution i.e. before the applicants joined RAS as direct recruits in, 1993, 1986 and 1987 from IRTS, ICCES and IA&AS respectively - were given as their year of allotment in RAS, the years in which they joined their respective parent service. On the other hand, the applicants were treated as fresh recruits in spite of their having been already members of Group 'A' services, and given the benefit of service only from their dates of joining RAS. Discrimination begins at this point itself. It is compounded by the Special Recruitment of 1989, facilitated by the amendment to Rule 24 of the Rules, of persons described to be of outstanding ability and merit in connection with the affairs of the union, who may or may not be from anyone of the organised All India, Central, State Civil Services, Group 'A', or those holding a substantive Gazetted post or its equivalent in a Public Sector Undertaking or in an University or those who have acquired skill or expertise, in any sphere of activity and whose services are considered useful/necessary by Head of Organisation in achieving its functional objectives, with due regard to the age and experience relevant to the level of the post. It is further pointed out that the year of allotment of such recruits shall be according to their year of allotment, if any, in their parent service or in the absence of year of allotment, the year in which they joined Group 'A' Central Services. The applicants have been left out in the cold by this method also. Interestingly among those who have arrived in RAS by this method was one Sanjeev

Kumar of Indian Economic Service, who also joined in 1984, like the applicant (R. Kumar), and who was given the benefit of his service from 1984, which had been denied to Kumar. The above amendments ordered to protect the interests of the inductees by special recruitment had gone against the interest of the applicant.

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17. It was in this context that opinion was sought by the respondents from the Department of Personnel and Training and the Ministry of Law. On fixation of Kumar's seniority, DOPT felt that amendment to Rule 24 made in 1989 has adversely affected Shri Kumar's interest. A consequence of the provision for lateral induction would be that an officer of any service who was recruited through the 1983 CSE on his absorption in RAS would rank senior to Shri Kumar even though he might have ranked lower than Shri Kumar in the UPSC merit list. This would be invidious. Further, as Shri Kumar's appointment to RAS as direct recruit had a direct nexus with his selection through the 1983 Civil Service Exam and the written examination conducted by the Cabinet Secretariat through which the other three persons were selected for interview was not comparable to CSE passed by Kumar, his selection alongwith other three persons was not a common selection and consequently there ought not to have been a common merit list for them. Therefore, Shri Kumar and others like ^{him} _h who have been appointed in the same manner subsequently can be said to constitute a separate category or class of persons distinct from those appointed by the Cabinet Secretariat through their own exam or by another method without having any nexus

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with the Civil Services Exam. Therefore, according to DOPT, it was a fit case for invoking general relaxation under Rule 161 of the Rules, to relax Rule 26 (5) to deal with the Kumar's seniority. Law Ministry whose advice was sought opined that instead of granting relaxation, the interests of all concerned would be protected if a specific provision is made in the Rules for determining the year of allotment of direct recruit officers appointed to JTS of RAS at the maintainance stage.

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18. It is thus evident that both Deptt. of Personnel and the Ministry of Law, who are nodal Ministries under the Central Govt. to consider Service matters and render advice have felt that the amendment to Rule 24 had hurt the interests of the applicant (R.Kumar) and directed that the same could be overcome either by resorting to relaxation under Rule 161 or by making a specific provision in the Rules to deal with such cases. Interestingly the respondents have not considered it necessary to follow either of the opinions, on the specious plea that the opinion of the DoPT or other concerned Deptt/Ministries is sought to examine an issue in a wider perspective so that a balanced decision is reached within the framework of the laid down Rules and the functional requirements of the organisation and the consulting Deptt. is not bound to follow the advice but can take its own decision. In other words, the respondents did not find it convenient to accept the advice. This averment by the respondents along with the expression "whose services may be considered useful/necessary by the Head of the organisation in achieving the

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functional objectives of the organisation" in Rule 24(2) (iii), gives the impression that the respondents consider themselves to be an organisation, totally unfettered in the conduct of its affairs and answerable to none. Applicants concerned in those OAs have been at the receiving end of this unhelpful attitude and irregular practice. All the three of them have been placed at a disadvantageous position, vis a vis who joined earlier than themselves (against whom they cannot have any legitimate complaint) and those who joined RAS after them through Special Recruitment in 1989 laterally as well as those who joined after 1997 with the benefit of inclusion of their past service. The Statements showing the years of Allotment/ Joining in Original Service & RAS of All India Services/Central Services Group 'A' officers, brought on record by the respondents, clearly shows that except for the applicants - Shri J.K.Ojha belonging to IRTS 1991 (allocated the year of allotment of 1993 in RAS) Shri R. Kumar belonging to ICCES 1984 (allocated the year of allotment of 1985 in RAS) and Smt. Amita Kumar belonging to IA&AS 1985 (allocated the year of allotment of 1986 in RAS) - every other individual has been allocated the year of allotment which is the same as the year of their entry in their earlier service. Needless to say the respondents are guilty of discrimination against these applicants and that too without any reason or justification.

19. We also observe that the Rules have been further amended by Notification No. A-12018/3/97-DO-I-332 dated 9-7-1997, by permitting induction of "those who

have successfully competed in the Civil Service Examination and have rendered not less than two years of service in any All India/Central Service Group 'A' in the junior scale of RAS". This has been done by inserting Clause (d) in Rule 26 (2). The amended Rule goes on to direct in Sub-rule (6) that "the seniority of the probationers who have been selected from All India/Central Services shall be according to their year of allotment in their original service and the inter se seniority of the candidates of the same year of allotment shall be as per the position in the combined merit list of the relevant Civil Service Examination". Therefore, recruits to RAS from other Group 'A' services, joining on the basis of 1997 amendment would also get the benefit of their original service, for computing the service in RAS. This leaves behind the likes of applicants as odd persons out in the entire scheme of things. This can only be described as invidious and hostile discrimination as has been noted by the DOPT also. Respondents' only explanation is that at the time when the applicants joined RAS from other services, there was no alternative to loss of previous service, which was a policy directive, totally unassailable in terms of the Hon'ble Apex Court's decision in UOI Vs. S.L.Dutta & Anr. (supra). The fact, however, is that the benefit of inclusion of past service was available to all the entrants in RAS before the applicants joined it and it was made available to all most all those who joined it subsequently leaving the applicants among the handful who have been denied the same without any rationale. Respondents seek to perpetuate this illegal act, holding it out to be an inviolable policy

prescription, which has to be accepted by the applicants for all time to come, as they apparently feel that they have totally unfettered authority to deal with their employees, the way they elect to do without any accountability. Removal of this discrimination was not an insurmountable problem as the Rule 161 of the Rules, given below itself provides for dealing with such situations :-

"Where the Govt. is of the opinion, that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect of any class or category of persons".

Fairness and transparency in administration demanded that the respondents should have taken corrective action treating the applicants as a special class, which they were. They have, however, chosen not to act and thereby permitted the discrimination to be continued. This is illegal and has to be set aside in the interest of justice.

20. We have also perused all the decisions cited by both the sides. We observe that the decisions referred to by the respondents can be distinguished on their facts, totally different from the present OAs. Therefore we hold that they are not applicable.

21. We also note that the respondents have been guilty of deliberate and unjustified discrimination against the applicants forcing them to move the Tribunal for vindication of their case. Therefore, in our view they are entitled to be reimbursed atleast part of the costs, by the respondents.

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22. In the above view of the matter, the applications succeed and are accordingly allowed.

(i) OA 2200/99

Impugned order dated 23-6-1998 is quashed and set aside and the respondents are directed to treat Shri J.K. Ojha, applicant as having been recruited in RAS in 1991, which is his original year of allotment in his parent organisation i.e. IRTS, where from he came over to RAS in 1993, as a direct recruit, with all consequential benefits including seniority and promotion, in accordance with law ;

(ii) OA 1434/2000

Impugned order dated 9-5-2000 is quashed and set aside and respondents are directed to treat Shri R. Kumar, applicant as having been recruited RAS in 1984, which is his original year of allotment in his parent organisation i.e. ICCES where from he came over to RAS as a direct recruit in 1996 with all consequential benefits including seniority and promotion, in accordance with law.

(iii) OA 1506/2000

Impugned order dated 9-5-2000 is quashed and set aside and the respondents are directed to treat Smt. Amita Kumar, applicant as having been recruited in RAS in 1985, which is her original year of allotment in her parent organisation i.e. IA&AS where from she came

over to RAS in 1987 as a direct recruit, with all consequential benefits including seniority and promotion, in accordance with law.

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23. We also order that the respondents shall pay to the each of the applicants costs for the OA quantified at Rs. 2000/- (Rupees two thousand only)

Govindan S. Tampli
Member (A)

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Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)