

Central Administrative Tribunal
Principal Bench

O.A. No. 999 of 1999

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New Delhi, dated this the ⁱⁿ 27 November 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

S/Shri

1. Lalit Kumar,
S/o Shri Prakash Chand,
Research Officer (I&CAD),
Planning Commission,
424, Yojana Bhawan,
Sansad Marg,
New Delhi-110001.
2. Samir Kumar
3. K. Guite
4. K. Sensarma
5. N. Srinivas Rao
6. Subrata Mukhopadhyay
7. Rajeev Kumar
8. Yashiv Singh
9. Anupam Mishra
10. Sudhir Kumar Arya
11. Dinesh Kapila
12. Ms. Chandni Watal
13. Sanjiv Joshi
14. Ms. Geetu Sidhu
15. Antony Cyriac
16. Sjay Srivastava
17. S.S. Das
18. Simmi Chaudhary
19. Bijaya Kumar Behera .. applicants
(By Advocate: Shri S.K. Das)

Versus

1. Union of India through
the Secretary,
Dept. of Economic Affairs,
Ministry of Finance,
North Block, New Delhi.

(31)

2. Shri Harpal Singh
and 39 others

.. Respondents

(By Advocate: Shri Rajinder Nischal
for official Respondent No.1
Shri Gyan Prakash for pvt. respondents)

ORDER

S.R. ADIGE, VC (A)

Applicants who were directly recruited to Grade IV of Indian Economic Service in 1995-96, impugn Col.4 of respondents' order dated 20.11.97 (Ann. A-1) granting deemed date of promotion, (subsequently clarified vide corrigendum dated 2.12.97 to deemed date of seniority) of 1991-92, to 90 promotees to Grade IV of IES. They seek placement in seniority above the aforesaid 90 promotees. Orders issued by respondents consequent to impugned order dated 28.11.97 have also been challenged.

2. As per applicants' own averments, according to Rule 8(1)(a) I.E.S. Rules 1961 framed under Article 309 of the Constitution, which govern the IES cadre, recruitment to Grade IV of IES is from two sources

- i) 60% through direct recruitment (prior to 1.1.81 it was 75%)
- ii) 40% through promotion from amongst feeder grade (prior to 1.1.81 it was 25%).

3. Admittedly while there was direct recruitment made to IES since 1968, the promotional quota was not filled up since long. The departmental candidates who had been promoted to Grade IV of IES

from the feeder cadre on ad hoc basis since a long time, moved the Court, and on the basis of their continuous ad hoc officiation, they were regularised in Grade IV of IES, pursuant to the Hon'ble Supreme Court's judgment in Narendra Chadha Vs. Union of India AIR 1986 SC 638. Since that judgment benefitted only those candidates who had been officiating in Grade IV of IES since long, and left out many officers on account of ~~these~~ not having officiated against posts in Grade IV of IES, despite some of them being senior to the beneficiaries in Narendra Chadha's case (supra), those officers moved the Court in the case of B.S. Kapila Vs. Union of India. Finally the Hon'ble Supreme Court in its order dated 11.9.90 in B.S. Kapila's case (supra) directed that those persons should be promoted to Grade IV of IES w.e.f. 1.10.90 (Annexure A-7).

4. Applicants have not denied in rejoinder, the specific averment of official respondents in their reply, that from 1990 onwards, no DPC was convened for filling up the promotee quota, and for the first time in 1997 a DPC was held, presided over by UPSC, and 90 promotees were inducted into Grade IV of IES, after preparing ⁷ separate panels for the year 1991-94. It is these 90 promotees who feature in impugned order dated 20.9.97. Col.4 of the impugned order dated 20.9.97 is actually the deemed date of seniority, and not the deemed date of promotion, as has been clarified in corrigendum dated 2.12.97 (Ann. R-1 to ⁷ reply of official respondents).

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5. The present O.A. thus questions this deemed date of seniority, because applicants being direct recruits to Grade IV of IES, have become junior to those 90 officers promoted to Grade IV of IES in 1997, by virtue of the deemed date of seniority of 1991-94.

6. We have heard applicants' counsel Shri Sanjay Das, and Shri Rajinder Nischal for official respondents. Shri Gyan Prakash appeared for private respondents and has also been heard. Shri Das and Shri Gyan Prakash have also filed written submissions which have been taken on record.

7. The grounds taken to challenge impugned order dated 20.11.97 are

i) There is no provision to grant antedated deemed date of seniority to officers promoted to Grade IV of IES.

ii) Grant of antedated deemed date of seniority is violative of Rule 9 (B) read with Rule 9 C IES Rules.

iii) Grant of antedated deemed date of seniority in Grade IV of IES is against Rule 8(1) (a) and 8(1)(b)(i) IES Rules.

- iv) Grant of antedated deemed date of seniority is against the last sentence of para 23 of the Hon'ble Supreme Court's judgment in Narendra Chadha's case (supra)
- v) Grant of antedated deemed date of seniority is against the provisions of Para 6.4.4 of DOPT's O.M. dated 10.4.89.
- vi) Grant of deemed date of seniority is violative of the guidelines/instructions laid down in Chapter 34 of Swamy's Manual of Establishment and Administration.
- vii) By not challenging their non-promotion if at all due, promotees must be deemed to have ^{given} ~~been~~ up their rights in favour of direct recruits.
- viii) In matters of seniority, a challenge to promotions, delays, should not be lightly excused as held by Hon'ble Supreme Court in several cases.
- ix) No opportunity was given to applicants to show cause against their depression in the seniority list.

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- x) The controlling authority as defined in Rule 6 IES Rules had not determined the seniority of the 90 promotees, and moreover UPSC had not been consulted as required under Rule 9D IES Rules.
- xi) Posts under direct recruitment quota had been illegally [^]diverted to promotion quota to give the promotees [^]undue benefit.
- xii) Although [^]power to relax the rules were contained in Rule 16 IES Rules, the same could not be done with retrospective effect, but in the present case while the promotees had been promoted to IES in 1997, they had been given seniority retrospectively w.e.f. 1991-94, even before they entered Grade IV of IES. [^]

8. Various rulings have been cited in support of these grounds, including Sardar Govind Rao & Ors. Vs. State of M.P. 1965 (1) SCR 678; Shri Rangaswami The Textile Commissioner & Others Vs. Sagar Textile Mills & Others 1977 (2) SCC 578; D.A. Patil & Anr. Vs. State of Maharashtra & Ors. (1999) SCC 354; B.R. Sharma Vs. Haryana State Electricity Board AIR 1993 SC 2573; State of Maharashtra Vs. Purushottam & Others 1996 (9) SCC 266; and A.N. Sehgal Vs. R.R. Seoran Vs. 1992 Supp (1) SCC 304.

9. We have considered these grounds carefully.

10. We note that the IES Rules have been framed under Article 309 of the Constitution, and Rule 9D thereof reads as follows:

9D: Special provision in case of undue hardship or injustice:

When the Controlling Authority is of the opinion that the determination of seniority of any officer in accordance with these rules would cause or likely to cause undue hardship in any particular case, then the controlling authority may in consultation with the Commission and for reasons to be recorded in writing determine the seniority in a just and equitable manner.

11. Respondents are on record, and as pointed out earlier, it has not been denied by applicants in rejoinder, that as no DPC was held between 1991 and 1997, the DPC which was held under Chairmanship of UPSC in 1997 recommended promotion of 90 candidates to Grade IV of IES, and since the delay in promotion was due to administrative reasons, and the

candidates had suffered for no fault of their own, they were
 accorded a deemed date of seniority between 1991 and 1994. (37)
 Respondents have stated in their reply, and there is also no
 specific challenge in rejoinder to this statement, that by giving
 the aforesaid deemed date of seniority, the larger public interest
 of protecting the posts from being abolished was also served,
 apart from removing the justifiable grievances of the
 promotees. When such power is expressly available under the
 rules, and when undoubtedly it has been exercised after
 recording reasons in the relevant file, it is clear that a
 substantial component of Rule 9D is fulfilled. During
 arguments it was contended by applicants' counsel that while
 such determination of seniority may be made in a particular
 individual case; it could not be so determined in as many as 90
 cases as has been done in the present O.A. As each of these 90
 cases is a particular individual case, merely because all these 90
 cases have been grouped in one order, cannot be construed to
 mean that Rule 9D would not apply in these cases. Hence this
 argument fails.

12. In the light of the express provisions contained in
 Rule 9D IES Rule, it is clear that grounds (i), (ii), (iii), (iv), (v)
 and (vi) in Para 7 above fail.

13. In so far as grounds (vii) and (viii) in para 7 above
 are concerned, official respondents have stated that the
 promotees had been representing to the authorities from time to

time about the delay being caused in their promotions due to administrative reasons and consequent loss of seniority. If, in the background of their representations, and other surrounding factors, including the larger public interest of avoidance of the posts themselves standing abolished, official respondents have granted applicants deemed date of seniority, the same cannot be challenged by applicants on the grounds that the promotees must be determined to have given up their rights in favour of direct recruits. Hence these grounds also fail.

14. As regards ground (ix) as official respondents took a policy decision which they were fully authorized to take in accordance with Rule 9D above the question of giving applicants or any others an opportunity to show cause does not arise.

15. We then come to ground (x). Rule 6 IES Rules defines the Controlling Authority to be the Ministry of Finance (Dept. of Economic Affairs) advised by a Board known as the IES Board. The Board is to be presided over by the Cabinet Secretary and would in addition, consist of the Secretary, Dept. of Economic Affairs; the Chief Economic Adviser and three other Secretaries of participating Ministries to be nominated by the Ministry of Finance, Dept. of Economic Affairs. During arguments Shri Nisha very fairly submitted before us that the IES Board had not been consulted, but he contended that all the other departmental authorities had been consulted, and

consultation with the Board was at best a formality. We have given our anxious consideration to these submissions. We note that the 90 promotees whose promotions are at stake, and some of whom have already retired by now, are not at all fault if official respondents failed to consult the Board. The decision taken by official respondents to grant the promotees a deemed date of seniority was to repair an injustice done to them for failing to hold DPC regularly and also in the larger public interest of avoidance of the posts being abolished. It is also not denied that the DPCs were held under the Chairmanship of UPSC which is a high constitutional authority and deemed date of seniority was granted on the basis of yearwise panels, as contained in the statement in para 4.14 of official respondents' reply. Keeping this in view, we hold that non-consultation with the IES Board ^{in the facts and circumstances of the present case} is by itself not an infirmity serious enough to vitiate the action taken by official respondents. We are supported in our view by several decisions of the Hon'ble Supreme Court.

16. In N.C. Bhatnagar Vs. Union of India & Others 1991

(1) SLR 761 the Hon'ble Supreme Court has held

"But if the meeting of the DPC scheduled to be held is arbitrarily or malafidely constituted, without any reasonable justification to the prejudice of an employee and he is not considered for promotion to the higher post the Government in a suitable case can do justice to such an employee by granting him promotion or appointing him to higher post for which DPC was to be held with retrospective effect so that he is not subjected to lose further in seniority list, and the mistake or

delay on the part of the department should not be permitted to recoil on the appellant.”

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17. It is true that the present case is not one where the DPC meeting was arbitrarily or malafidely constituted but official respondents have themselves averred that the DPC could not be held from 1991 onwards owing to administrative delays, and in that circumstance the aforesaid ruling would squarely apply to the facts and circumstances of the present case. Indeed the aforesaid ruling is also present almost verbatim in para 15 of the Hon'ble Supreme Court's judgment in K. Madhavan Vs. Union of India 1987 SCC (L&S) 490.

18. Again in N.K. Anand & Anr. Vs. Union of India & Others 1991 (16) ATC 346 the CAT, Principal Bench in a case where the vacancies became available in 1978 but the DPC was convened on 30.5.85, held that as it was not a case where DPCs could not be held for reasons beyond control as contemplated in DP & AR's O.M. dated 24.12.80, the applicants were entitled to regular promotion from the date when the vacancies arose in 1978.

19. In so far as the rulings relied upon by applicants' counsel and referred to in Para 7 above are concerned, none of them deal with a situation like the present one where there is a specific provision similar to Rule 9D IES Rules, empowering the Controlling Authority to determine the seniority in a manner which it considers just and equitable when it is satisfied that determination of seniority in accordance with rules was likely

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to cause undue hardship. These Rules have been framed under Article 309 of the Constitution, and if, pursuant to aforesaid Rule 9D, respondents, upon being satisfied that fixation of seniority of the promotees in accordance with rules would cause them undue hardship, have sought to fix their seniority in a just and equitable manner by granting them seniority from a retrospective date, their action cannot be faulted on that account, and the rulings relied upon by applicants' counsel do not advance applicants' claim.

20. In this connection the submissions on behalf of private respondents cannot be lightly disregarded that they were in the feeder grades of IES Grade IV since early nineteen eighties (generally between 1978 to 1983), and as per published Recruitment Rules, became eligible for promotion to IES Grade IV upon completion of four years service i.e. between 1982 to 1988, and even if as per stand of official respondents, seven years' service in the feeder grade was required for eligibility for promotion to IES Grade IV as per Recruitment Rules, they became eligible for consideration for promotion to IES Grade II between 1986 and 1990. Hence if because of non-holding of DPC by official respondents between 1990 and 1997 for no good reasons, they could not be considered for promotion, they cannot be allowed to suffer. Furthermore several private respondents were promoted to IES Grade IV on ad hoc basis from 1994 onwards, while applicants were not even born into

the IES, and joined that service as direct recruits only in 1995-

96.

21. In the result no good grounds have been made out to warrant judicial interference in this matter. The O.A. is dismissed. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

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