

Central Administrative Tribunal
Principal Bench

O.A. 2444/95

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New Delhi this the 30 th day of November, 1999

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

Tushar Ranjan Mohanty,
S/o Shri Rabi Narayan Mohanty,
Computer Literate,
Inter-State Council Secretariat,
Ministry of Home Affairs,
Vigyan Bhavan Annexe,
Maulana Azad Road,
New Delhi-110011.

... Applicant.

In person.

Versus

Union of India through
the Secretary,
Department of Statistics,
Ministry of Planning,
and Programme Implementation,
Sardar Patel Bhavan, Sansad Marg,
New Delhi-110 001.

... Respondents

By Advocate Shri K.C.D. Gangwani, Sr. Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application not against any particular order but for a direction to the respondents to properly implement the Indian Statistical Rules, 1961 (hereinafter referred to as 'the Rules') with regard to filling up 25% of the vacancies in Grade-II/Grade-I and Junior Administrative Grade (JAG) by direct recruitment through the Union Public Service Commission (UPSC).

2. Under Rule 8 of the Rules which deals with future maintenance of the Service i.e. the Indian Statistical Service constituted under Rule 4, it was 60% by direct recruitment through an open competitive examination and 40% by selection from among eligible officers. The percentage of direct recruitment was later amended to 25% of the vacancies

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in Grade-II in the manner prescribed in Schedule-II. The applicant has stated that the respondents by order dated 8.4.1987 have promoted 13 Grade-III officers of the Indian Statistical Service to combined Grade-II and Grade-I Service in the scale of Rs.3700-5000. He has submitted that it is not clear as to when these two grades were merged. The applicant has very vehemently submitted that the respondents ought to have followed the Rules which still speaks of Grade-II and Grade-I through direct recruitment. He has submitted that further promotion orders had been issued by the respondents promoting 86 Grade-III officers of the Service as JAG and accordingly, corresponding to 134 such promotions, the respondents ought to fill the direct recruitment vacancies through the UPSC which they have failed to do. The applicant who belongs to Grade-III of the Service is, therefore, aggrieved that the respondents have failed to consider the process for filling the direct recruitment quota vacancies through the UPSC which, he has very vehemently submitted, would be beneficial to him as he would certainly qualify in the same. Hence this O.A., seeking a direction to the respondents to implement Rule 8(1)(c)(ii) and Rule 8(1)(d)(ii) of the Rules for filling up 58 vacancies in Grade-II/Grade-I/JAG through direct recruitment by the UPSC.

3. The respondents in their reply have denied the above claims of the applicant. They have submitted that pursuant to the decision taken by the Government on the 4th Pay Commission's recommendations, Grade-I and Grade-II were merged in the JAG in the scale of Rs.3700-5000 and Super Time Scale Level I and II posts in the Senior Administrative Grade (SAG) (Rs.5000-6700-revised) w.e.f. 1.1.1986. They have

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submitted that Grade-III and Grade-IV have been given the nomenclature of Senior Time Scale (STS) and Junior Time Scale (JTS), respectively. They have also submitted that while recommending merger of Grade-I and Grade-II in the JAG in line with the other organised Services, the 4th Pay Commission had recommended the abolition of lateral entry, that is 25% by direct recruitment in the erstwhile Grades II and I of the Service. Earlier, the 3rd Pay Commission had recommended that the direct recruitment at two successive stages should be abolished in Grade-III and direct recruitment to the erstwhile Grade-II should be reduced to 25% and direct recruitment to the erstwhile Grade-I of the Service was unnecessary. The Government had taken a decision that the first two recommendations should be accepted and the rules were amended accordingly. Later, in pursuance of the decision taken by the Indian Statistical Service Board on the recommendations of the 4th Pay Commission, the Department of Personnel and Training had decided, inter alia, to dispense with the direct recruitment i.e. lateral entry to the erstwhile Grade-II and Grade-I. Shri K.C.D. Gangwani, learned counsel, has submitted that necessary decisions have been taken for amendment of the Rules. They have also submitted that the amendments to the Rules have been agreed to by the DOP&T and the UPSC to Rule 8 to the effect that all vacancies in the JAG grade shall be filled 100% by promotion from amongst STS officers who have completed not less than 5 years regular service. Learned counsel has submitted that various proposals for amendment of the Rules are under consideration. For example, whether the UPSC is to be associated in the DPC or not. Since the final decision has to be taken by the Government on these questions, the formal notification amending the Rules has not been done. He has, however, relied

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on and submitted a copy of the Notification (GSR No 281(E)) dated 13.3.1987 i.e. the Central Civil Services (Revised Pay) Amendment Rules, 1987 (copy placed on record) by which Grade-I and Grade-II of the Service have been merged in the pay scale of Rs.3700-5000. Below this there is a note which reads that "Posts of Grade-I and II to be merged". Shri K.C.D. Gangwani, learned counsel, has submitted that as these posts have been merged and the decision to notify the various amendments to the rules is under active consideration of the Government, there is no question of operating the 1961 Rules to fill up the vacancies in the Service, including seeking any relaxation, for promotion of officers from Grade-III to JAG level or other higher grades.

4. Learned counsel for the respondents has also taken a preliminary objection that the O.A. suffers from non-joinder of parties and has referred to Paragraph 24 of the rejoinder filed by the applicant giving the names of officers who have been promoted. He has submitted that in case the applicant's claim is allowed, it will directly affect a large number of persons who have been promoted who have not been impleaded and are necessary parties. Therefore, the learned counsel has submitted that on this ground alone this application is liable to be rejected. Another ground he has taken is that the claims filed by the applicant are in the nature of a Public Interest Litigation on which the Tribunal has no jurisdiction. He has also submitted that the CCS (Revised Pay) Rules, 1987 have also been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution and in case of any inconsistency with the Rules of 1961, the latter ^{Rules} should prevail. He has also submitted that in any case, the applicant has taken the benefits of the

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1987 Rules and, therefore, he is estopped from claiming strict enforcement of the Rules which are in the process of being amended.

5. The above averments of the respondents have been disputed by the applicant who states that he has acquired a vested right to be considered as a direct recruit for the posts in Grade-II, Grade-I and JAG in terms of the Rules. He has also submitted that the merger of the pay scales by the CCS (Revised) Pay Amendment Rules, 1987 which has a note to the effect that "posts of Grade-I and Grade-II to be merged shows that the actual merger has not taken place yet. He has relied on the judgement of the Tribunal filed by him earlier in O.A. 2498/90 wherein it has been stated that appointments to Grades-II and I is by direct recruitment as well as by promotion. This sentence in the judgement dated 24.4.1995 in O.A.2498/90 relied upon by the applicant will, however, not assist him as it only refers to the position as existing under the Rules. He has submitted that the 1987 Rules only deal with pay fixation and does not in any way deprive him from succeeding in the O.A. for a direction to the respondents to proceed further for direct recruitment in Grade-II and Grade-I. He has also relied on **Narender Chadha Vs. Union of India** (AIR 1986 SC 638).

6. We have carefully considered the pleadings and the submissions made by the applicant and the learned counsel for the respondents. The respondents have also submitted the relevant records for our perusal.

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7. We notice from the relevant records submitted by the respondents that in furtherance to the recommendations of the 4th Pay Commission to merge Grade-I and Grade-II in the Service and abolition of a lateral entry into these grades, the Department has been considering the matter from 1987 onwards with various other concerned bodies. The proposal regarding association of the UPSC for promotions in the Service is also under their active consideration and there has been considerable notings and discussions with the concerned officials, including decisions at the highest level of Cabinet on the relevant issues a number of times during the intervening period. As submitted by Shri K.C.D. Gangwani, learned Sr. Counsel, the issue still to be resolved is with regard to the question of association of UPSC for promotions in the Service which is also to be decided at the highest level. From the records, it is seen that the Department is no doubt actively concerned with the question of carrying out necessary amendments to the 1961 Rules pursuant to its acceptance of the recommendations of the 4th Pay Commission although there has been considerable delay. Part of this has already been implemented by way of the Revised Pay Rules of 1987 and notified on 13.3.1987, by which Grade-II and Grade-I of the Service which were in the pay scales of Rs. 1500-1800 and Rs.1800-2000 have been merged and given the same pay scale of Rs.3700-5000. Therefore, taking into account the relevant facts and circumstances of the case, we are unable to see any force in the contentions of the applicant that in the meantime, the respondents should be directed to follow Rule 8 of the 1961 Rules to fill up the vacancies through direct recruitment by the UPSC in Grades II and I and JAG, etc, as Grade-II and Grade-I have already been merged as JAG ^{level, 13} at least in the same pay scale of Rs.3700-5000.

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8. The Tribunal by order dated 5.1.1996, after hearing the parties, had also rejected the applicant's prayer for interim relief for staying the promotions being undertaken by the respondents at the level of Grade-II. The respondents are processing the matter for amendment of the 1961 Rules regarding filling up of higher level posts, including Grade-II and Grade-I in the Service. Therefore, there appears to be no justification in directing them to implement the 1961 Rules as prayed for by the applicant taking into account the position under the Revised Pay Scales Rules of 1987 which has also admittedly benefitted the applicant. The judgement of the Supreme Court in Narender Chadha's case (supra) relied upon by the applicant deals with the question of promotees continuing in certain posts for more than 15 years in violation of the Rules and their reversion and seniority, which case does not assist the applicant in the present set of facts and circumstances.

9. In the result, as we find no merit in this application, O.A. fails and is dismissed. No order as to costs.


(Smt) (Lakshmi Swaminathan)
Member(J)


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

'SRD'