

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No./T.A. No. 317 of 1996 Decided on: 2.2.98

T.R. Mohanty
(By Advocate: In Person)

Applicant(s)

VERSUS

U.O.I. & Anr./Ors.

Respondents

(By Advocates: Shri P.H.Ramchandani
Shri K.C.D.Gangwani
Shri R.K.Kamal

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HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal? NO

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 317 of 1996

New Delhi, date this the 2nd FEBRUARY, 1998

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

Shri T.R. Mohanty,
S/o Shri R.N. Mohanty,
Computer Literate,
Inter-State Council Secretariat,
Ministry of Home Affairs,
Vigyan Bhawan Annexe,
New Delhi-110011. ... Applicant

(Applicant in person)

Versus

1. Union of India
through the Secretary,
Dept. of Statistics,
Ministry of Planning & Programme
Implementation,
Sardar Patel Bhawan,
Parliament Street,
New Delhi-110001.
 2. Ms. S. Wadiwa,
C/o The Secretary,
Dept. of Statistics,
Ministry of Planning & Prog. Implementation,
Sardar Patel Bhawan, Parliament St.,
New Delhi.
 3. Shri Shiv Kumar,
C/o The Secretary,
Dept. of Statistics,
M/o Planning & Prog. Impl.
Sardar Patel Bhawan, Parliament St.,
New Delhi.
 4. Shri Pala Singh Tanok,
C/o the Secretary,
Dept. of Statistics,
M/o Planning & Prog. Impl.,
Sardar Patel Bhawan, Parliament St.,
New Delhi.
 5. Shri M.R. Meena,
C/o The Secretary,
M/o Planning & Prog. Impl.,
Sardar Patel Bhawan,
New Delhi.
 6. Shri G.R. Meena,
C/o The Secretary,
Dept. of Statistics,
M/o Planning & Prog. Impl.,
Sardar Patel Bhawan, Parliament St.,
New Delhi.
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7. Shri D.L. Meena,
C/o The Secretary,
Dept. of Statistics,
M/o Planning & Prog. Implementation,
Sardar Patel Bhawan,
Parliament St.,
New Delhi.

... Respondents

(By Advocates: Shri P.H. Ramchandani, Sr. Counsel
and Shri K.C.D. Gangwani, Senior
Counsel for official Respondents
Shri R.K. Kamal for pvt.
Respondents 2 to 7.

JUDGMENT

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

**Applicant impugns promotion order dated 4.1.96 (ann
and seeks**

- (i) placement of Respondents 2 to 7 below him in seniority list of Indian Statistical Service (ISS in short) Grade III;
- (ii) to quash DPC's recommendation for promoting ISS Grade III Officers to ISS Grade II (JAG) on basis of impugned seniority list;
- (iii) filling up of ISSW Gr. II (JAG) vacancies in accordance with ISS Rules, 1961 and consolidated instructions dated 10.4.89;
- (iv) to quash relaxation of Rule 8(1)(c)(1) ISS Rules, 1961 if any as being violative of Rule 6 and Rule 16 ISS Rules, 1961; and
- (v) promotion from the date the vacancy arose in terms of CAT judgment in O.A. No. 1231/89 Sher Singh Vs. U.O.I. & Ors.

2. Applicant joined ISS in Gr. IV as a general category direct recruit through UPSC in 1981. Respondents 2 to 7 are also members of ISS and belong to reserved (SC/ST) category. Pursuant to Hon'ble Supreme Court's direction in Narendra Chadha and others Vs. UOI & Ors. AIR 1986 SC 633

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a final seniority list of ISS Gr. IV officers as on 11.2.86 (date of judgment) was circulated on 8.5.86 (Annexure A/2) in which applicant's position appeared at Sl. No. 513. The position of R-2, R-3 and R-4 was at Sl. No. 540, 541 and 542 respectively, while R-7's position was at Sl. No. 756. Names of R-5 and R-6 did not appear in that seniority list. The said seniority list was challenged by certain direct recruits in O.A. No. 844/86 Pratap Narain & Ors. Vs. UOI & Ors. before CAT, P.B. who by judgment dated 13.9.89 (Annexure A-6) allowed the O.A. in part and directed that the impugned seniority list dated 8.5.86 be modified to limit the continuous officiation only to those incumbents who had continuously officiated against cadre posts included in ISS Gr. IV. Against the said judgment dated 13.9.89 the UOI filed an SLP in which the Hon'ble Supreme Court by judgment dated 29.4.92 (UOI & Anr. Vs. Pratap Narain & Anr. AIR 1992 SC 1363) allowed the appeal and set aside the Tribunal's judgment dated 13.9.89.

3. Meanwhile a draft seniority list of ISS Gr. IV as on 28.2.89 was prepared and circulated vide O.M. dated 30.8.89 (Annexure A/3), in which applicant appeared at Sl. No. 160. R-2, 3 & 4 did not appear in that list, as in the mean time they had been promoted to ISS Gr. III, vide Order

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dated 24.11.87 (Annexure A/4), while R-5, 6 & 7 appeared at Sl. No. 277, 278 and 366 respectively. Aggrieved by order dated 24.11.87, by which he had been superseded by eight reserved category officers including R-2, 3 & 4, applicant file No. 336/88 before CAT, Calcutta Bench who by judgment dated 28.11.88 (Annexure A/5) allowed the O.A. and directed that applicant be deemed to have been promoted to ISS Gr. III w.e.f. 24.11.87, i.e. the date his juniors were promoted, with consequential benefits, and he be placed above those juniors in ISS Gr. III. Civil Appeal No. 3844/89 against the same was dismissed by Hon'ble Supreme Court on 14.7.94 and relief was granted to all those officials of general category who were similarly placed as applicant. However, as by the Tribunal's judgment dated 24.11.87 the promotion of the eight reserved category officers had been protected and the relief granted by Hon'ble Supreme Court to other general category officers similarly placed as Shri Mohanty, would involve creation of a large number of posts, the Hon'ble Supreme Court in Intervention Application No. 9/95 in a CCP filed by applicant in Civil Appeal No. 3844/89, by their order dated 27.3.95 modified their earlier order to the extent that leave was given to official respondents to revert the SC/ST candidates from the promoted posts if it became necessary, subject to

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protection of their financial benefits, and further that Shri Mohanty's entitlement to the relief was in respect of general category candidates, but if in the process he was reverted to a lower post, no recoveries were to be made from him.

4. Meanwhile on 27.1.93 a fresh draft seniority list of ISS Gr. IV officers as on 15.11.92 was prepared vide O.M. dated 27.1.93 (Annexure A/7), in which applicant appeared at Sl. No. 97. R-2, 3 & 4 did not appear in the list at all having already been promoted to ISS Gr. III while R-5, 6 & 7 were at Sl. No. 196, 197 and 279 respectively. Applicant contends that in view of anomalies in this draft seniority list dated 27.1.93, and the fact that some reserved category officers of ISS were demanding promotion from Gr. IV to Gr. III he represented on 10.3.93 (Annexure-A/8), asking Respondents to make promotion to Gr. III, only after Gr. IV seniority list was finalised; to maintain inter se seniority of Gr. IV and not make supersessions; and in the case of his promotion to Gr. III, the seniority list of Gr. III be revised on the basis of the judgment dated 28.11.88 and the old inter se seniority in Gr. IV be reverted to.

5. However, applicant contends that despite that representation, 138 ISS Gr. IV officers were promoted to Gr. III vide order dated 2.4.93 (Annexure A/9). Although applicant was also promoted by this order, he was superseded by 18 reserved category officers. Aggrieved by the order dated 2.4.93 applicant states that he and 65 other general category officers filed O.A. No. 2011/93 on 10.9.93 on which a prayer for early hearing was granted and the matter was taken up for final hearing, but before the matter could be finally decided, R-1 issued impugned promotion order dated 4.1.96 (Annexure A/40) in supersession of all previous promotion orders to ISS Gr. III as a consequence of which O.A. No. 2011/93 was allowed to be withdrawn by order dated 1.2.96, with permission to file a fresh O.A. impleading all the necessary parties and impugn the order dated 4.1.96 if any grievance arose with respect to it.

6. It is in the aforesaid background that this O.A. has been filed, in which the promotion order dated 4.1.96 has been impugned, in which in Paragraph 7 (vi) R-2 stands at Sl. No. 38, R-3 at Sl. No. 69, R-4 at Sl. no. 70, R-5 at Sl. No. 39, R-6 at Sl. No. 52 and R-7 at Sl. No. 71, while applicant himself is at Sl. No. 89. It is with this position⁴ in the promotion order, with which applicant is aggrieved.

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7. The respondents in their reply have challenged the O.A. They state that the impugned promotion order dated 4.1.96 has been issued strictly in accordance with the Hon'ble Supreme Court's pronouncements, the rules and instructions and the O.A. is to be dismissed.

8. Applicant has also filed rejoinder in which he has denied the contention of the respondents and has broadly reiterated the averments made in the O.A.

9. We have heard this matter at great length spread over several sittings. Applicant argued his case in person. Official Respondents were represented by Shri P.H. Ramchandani and Shri K.C.D. Gangwani both of whom were heard. Shri R.K. Kamal appeared for the private respondents and was also heard.

10. During hearing on 30.1.97, we found that the dispute in the present O.A. resolved itself into determining:

(i) Whether the total number of posts in ISS Gr. III on the date of amendment to the Recruitment Rules of ISS Gr. III (20.2.89) was 166 as contended by applicant or 142/143 as contended by respondents.

(ii) Flowing from (i) above, the number of vacant posts in ISS Gr. III against which promotion could have been made on (i) 2-2.89 (ii) 21.2.89 to 31.3.89; (iii) 1.4.89 to

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31.3.90 (iv) 1.4.90 to 31.3.91 (v)
1.4.91 to 31.3.92 and 1.4.92 to
31.3.93.

Admittedly the applicant was promoted to ISS Gr. III in 1992-93. His claim was that if the number of vacancies were taken as 166 on 20.2.89 and actual vacancies had been calculated correctly, taking into account those arising out of deputations, promotion etc. he would have been promoted in 1989-90 and even if the number of vacancies as on 20.2.89 were taken as 142/143 averred by respondents, he would have been promoted in 1990-91. He did not seriously dispute the fact that after amendment to the ISS Recruitment Rules on 20.2.89, promotions would have to be made against vacancies calculated on annual basis and the reservation quota applied to vacancies thus calculated annually.

11. We had asked the respondents to examine these contentions and file a reply statement on affidavit and the aforesaid affidavit dated 3.3.97 is the respondents' reply.

12. In this connection, during course of hearing Shri Mohanty invited our attention to respondents' affidavit dated 3.3.97, filed in the background of our order dated 30.1.97.

13. Applicant in his own reply to that affidavit which he has filed on 13.3.97, has emphasised that respondents' affidavit dated 3.3.97 vindicates his stand that the yearwise vacancies

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have not been calculated correctly by respondents. He has invited our attention to Para 10.5 of respondents' aforesaid affidavit, according to which respondents themselves state that the applicant "could be covered for promotion to STS (Grade III) with reference to 20 vacancies for 1990-91". Even if the number of vacancies as on 20.2.89 be taken as 142/143 as averred by respondents, he would have been promoted in 1990-91 itself instead of 1992-93.

13A. Both sides have also filed their written submissions. In these written submissions, respondents have taken their stand that they promoted 138 Gr. IV Officers to STS (Grade III) by promotion order dated 2.4.93, and these promotions were with reference to the vacancies for 1989-90 to 1992-93 during which regular promotions could not be made due to stay on account of court¹ orders in another case. The vacancies were calculated on yearwise basis and reservations were provided with reference to the yearwise vacancies. They state that the applicant had inter alia raised certain doubts in regard to calculation of vacancies in the O.A. No.2011/93 filed by him, wherein the Tribunal had directed the respondents to take into account the procedure for determination of vacancies (as pointed out by applicant based on Govt. instructions) at the time of reviewing these promotions in implementation of Hon'ble Supreme Court's judgment dated 14.7.94 in C.A. No.3844/89 UOI & Ors. Vs. T.R.Mohanty &

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Ors. Respondents state that they had accordingly recalculated these 138 vacancies while issuing the 'review promotion' orders on 4.1.96. In order to calculate the yearwise vacancies, they state that as per existing instructions they had taken the number of vacancies in the STS (Gr. III) of the service as on 1st of April of the year concerned, by deducting the number of STS (Gr. III) officers in position as on 1st April of the year concerned, from the cadre strength (i.e. 143) and had added to that number the vacancies due to retirement etc. and promotions to the higher grade i.e. JAG during the year, i.e. from 1st April of that year to 31st March of next year. They state that Respondents had initiated action to make promotions to STS (Gr. III) in 1992-93 w.r.t the year-wise vacancies starting from 1988-89 with regard to the vacancies on account of deputations etc. in Gr. III, and average number of officers being on deputation worked out approximately, had been included only in the vacancies for the last recruitment year i.e. 1992-93. They further state that as the review of the promotions made in April, 1993 was undertaken in implementation of the Hon'ble Supreme Court's judgment dated 14.7.94 in CA No. 3844/89 in the light of their clarificatory order dated 27.3.95, in late 1995, by which ^{at time} almost all Gr. III officers, and such Gr. IV officers who were on deputation ^{at the} relevant time, had come back to the cadre, it would not be appropriate to take into consideration the

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number of deputationists for the purpose of adding to the number of vacancies in a particular year on other counts. The affidavit dated 3.3.97 indicates the number of yearwise vacancies in case the calculations are made in the light of directions of Tribunal dated 30.1.97 referred to in Paragraph 10 above. It is further stated that proforma promotions under Next Below Rule (NBR) to those officers who were on deputation at the time of promotion are required to be given on exercise of option by the concerned officer either to remain on deputation or to join the cadre, and in case they decide to remain on deputation, they are considered for proforma promotion, but in the present context it was not found feasible as most of the officers had since returned from deputation to the cadre and, therefore, under the new dispensation of calculation of vacancies it was presumed, in slight departure from the earlier practice, that these officers (deputationsⁱⁿ) on their promotion to Gr. III in their cadre would have opted to continue to remain on deputation and the vacancies in the cadre i.e. in Gr. III on account of their being away from the cadre due to deputation had been taken into ⁿconsideration in the next recruitment year. It is further stated that while making promotions in April 1993, they had no option but to presume that the Grade IV officers who were on deputation

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on the date of promotion, would have joined the promotion post and, therefore, the question of proforma promotion would not arise.

14. It is emphasised ^{by Respondents} that the calculation made by the Respondents as contained in their affidavit dated 3.3.97 was on the specific directions of the Tribunal dated 30.1.97 and was purely notional, and that they did not admit that the manner of calculation and/or number of vacancies earlier calculated was in any way violative of any instructions of the Govt. It is stated that whenever promotions are made w.r.t the past years, the situation obtaining at the time of the date of DPC is taken into account for the purpose of calculation of these vacancies, and the yearwise vacancies shown in the said affidavit were based on a purely hypothetical situation arising from the calculation of vacancies in the light of Tribunal's directions.

15. On the other hand applicant in his written submission has furnished a written table, in which he has emphasised that after recalculation of vacancies as per Respondents' own affidavit dated 3.3.97, there would be several changes in the seniority position of the officers promoted vide impugned promotion order dated 4.1.96.

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16. We would like to make it clear that the Tribunal had not given any ^{directions} ~~order~~ to the Respondents to calculate ^{the} ~~the~~ vacancies in a particular way. A plain reading of our order dated 30.1.97 makes it clear that after hearing both sides at considerable length, we had noticed that the dispute in the present O.A. resolved itself to determination of the total number of ISS Grade III posts at a particular point of time, and the vacancies against which promotion to those posts could have been made. We had recorded applicant's submission regarding the number of vacancies at a particular point of time, and his contention that if Respondents had calculated the vacancies correctly he would have been promoted in the year 1989-90 itself, or at the latest in 1990-91. We had asked Respondents to examine the matter and file their reply on affidavit, which they did it on 3.3.97. It is, therefore, wrong for the Respondents to contend that the Tribunal had directed them to calculate the vacancies in a particular manner.

17. In Para 10.5 of their affidavit, as pointed out by the applicant, the Respondents have themselves stated that 20 officers could be covered ~~for promotion~~ ^{for promotion} to STS (Gr. III) w.r.t. 20 vacancies for 1990-91, and amongst those 20 officers ~~in~~ ^{amongst} the name of applicant first mentioned at Sl. No.9. Respondents contend that


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the calculation of vacancies in their affidavit dated 3.3.97 is based on the premise that the deputationists on their promotion to Gr.III in the cadre would have opted to continue to remain on deputation, and as a result ~~the~~ the vacancies would have become available but while making promotions in April, 1993 they had no option but to presume that the deputationists on the date of promotion would have joined the promotion posts and therefore the question of proforma promotions would not arise. Respondents themselves state that ~~the~~ ^{proforma} promotions under NBR to all those who were on deputation at the time of promotion, are required to be given exercise of option by the concerned officers either to remain on deputation or to join the cadre. Calculation of vacancies cannot be left to presumption, and Respondents have not indicated the basis on which they presumed that the Grade IV officers who were on deputation in April, 1993 would have joined the promotion posts and the question of proforma promotion would not arise.

18. Under the circumstances, in the light of Respondents' own averment as contained in their affidavit dated 3.3.97 there are sufficient materials to indicate that the calculation of vacancies in ISS Grade III leading to the issue of the impugned promotion order dated 4.1.96 requires reexamination by respondents.

19. In the result the impugned order dated 4.1.96 to the extent that it relates to the position of the applicant in that list, and to that extent alone, is quashed and set aside. Respondents are directed to recalculate the vacancies becoming available each year, in accordance with the rules and instructions governing proforma promotions, the various court rulings in this regard as well as the other materials in this O.A. within four months from the date of receipt of a copy of this judgment, and consider the applicant's case for promotion from an earlier date in the light of the availability of vacancies calculated afresh, in accordance with rules and instructions, with consequential benefits, including further promotions. No costs.


(DR. A. VEDAVALLI)
Member (J)


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

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