

Central Administrative Tribunal
Principal Bench: New Delhi

OA 761/96

New Delhi, this the 27th day of November, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S. P. Biswas, Member (A)

27

In the matter of:-

Yashvir Singh,
s/o Sh. Raghuvir Singh,
r/o "PRATEEK"
Opp Hydel Store,
Siddheshwar Road,
Khourja.

...Applicant

(By Advocate: Shri B.B. Raval)

versus

Union of India through

1. The Secretary,
Ministry of Environment & Forests and
Wild Life,
B' Block, CGO Complex,
Lodhi Road, New Delhi.

...Respondents

(By Advocate: Shri V.S.R. Krishna)

O R D E R

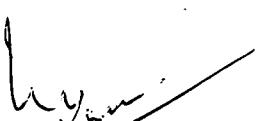
by Hon'ble Shri T.N. Bhat, Member (J):

The applicant appeared in the examination conducted by the Union Public Service Commission (UPSC) for entry in the Indian Forest Service in 1985 and after the examination he was informed by the UPSC that he had qualified in the said examination and that his name was being recommended for appointment. The applicant had appeared in the Civil Service Examination in the year 1986 for the 4th time though according to the rules he could appear only on three occasions. Having been informed that he had qualified in the examination in 1985 he approached the concerned department, namely, respondent no. 1, seeking his appointment in Indian Forest Service but on 3.3.1987

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he was informed by respondent no. 1 that he should once again give his willingness in writing if he still wanted to join the service. The applicant accordingly sent a reply in writing expressing his willingness for being appointed to the post. But in the meantime the UPSC, upon coming to know that the applicant had appeared on more occasions than permissible under the rules, issued an order by which the applicant was debarred from appearing in any examination conducted by the UPSC for three years. According to the applicant there was no further order passed by the UPSC withdrawing or setting aside the earlier order by which the applicant's name was recommended for appointment to the I.F.S. The representation of the applicant against the order of the UPSC debarring the applicant from appearing in the examination for three years was rejected by the UPSC. Respondent no. 1 also later informed the applicant in the year 1988 that in view of the decision taken by the UPSC to debar the applicant he could not be appointed to the I.F.S. It is contended by the applicant that he has been subjected to double jeopardy. He is also aggrieved by the fact that even after the expiry of three years no appointment was given to him.

2. The applicant, therefore, filed OA 1266/90 before this Tribunal seeking his appointment on the basis of the 1985 supplementary list w.e.f. 17.2.1990 i.e. after the "moratorium" of three years had expired. The OA was allowed by the judgment of the Tribunal dated 17.5.1994. It was only after 17.5.1994 that the applicant received a telegraphic communication dated 4.4.1995 from the Ministry of Environment & Forests that a decision had been taken to appoint the applicant to the IFS and the applicant should accordingly undergo medical and walking test. On 13.5.95 the applicant again received a telegram informing him that he had been selected to IFS on the basis of



29

the results of Indian Forest Service Examination, 1994 and the applicant was accordingly advised to join training at Indira Gandhi National Forest Academy, Dehradun on 1.6.1995. This telegram was followed by a letter containing the same information.

3. The applicant made a representation on 27.5.1995 in which he requested to be treated as senior to all probationers of 1995 batch of IFS and also to be given his home cadre i.e. Uttar Pradesh cadre as he was unnecessarily made to suffer for about 8 years. It was further submitted in the representation that had a prompt decision been taken by the respondents after the passing of the judgement by the Tribunal the applicant could have easily been accommodated in the 1994 batch of I.F.S. The applicant also submitted a representation from the Lal Bahadur Shastri National Academy of Administration, Mussoori on 26.10.1995 for allotment of suitable cadre to him.

4. The applicant received a communication dated 27.2.1996 from the Director, Ministry of Environment, Forests and Wild Life, Govt. of India, New Delhi informing the applicant that he had been allotted to Maharashtra cadre as per rules, which allotment, according to the applicant, is erroneous as the applicant should have been put on the top of the 1995 batch and had that been done he would have been easily accommodated in his home state cadre.

5. Applicant has sought the following reliefs:-

- i) To quash the impugned letter dated 26th Feb., 1996 at Annexure 'A' in so far as it allots the Maharashtra as the cadre of allotment to the applicant.

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(iii) In view of relief at (i) being granted, direct the respondents to allot the applicant the U.P. cadre being the occupant of the top slot of 1995 Batch as per Rules.

(iii) Award exemplary cost for this application with a further request to pass any other order or direction or grant any other relief as deemed fit in the light of the facts and circumstances of the case.

7 The respondents have resisted the OA mainly on the ground that having succeeded to get appointment only in pursuance of the judgement of the Tribunal dated 17.5.1994 the applicant cannot seek any relief that was not granted to him by that judgement. It is further stated that according to the operative part of the judgment the applicant's appointment came into effect only from the date the applicant joined the service and he would get his seniority from the date of his appointment and not earlier to that. It is also averred by the respondents that there is no rule under which the applicant could claim allocation to his home state cadre on the basis of his ranking in the panel. For this the respondents have relied upon a judgement of the Supreme Court in Union of India vs. Rahul Rasgotra, reported in JT 1994 (1) SC 441. According to the respondents the applicant having qualified on the basis of the examination held in 1985 he could claim allocation to a cadre also after the cadre allocation of the last candidate in that batch. It is further averred that the last candidate in the 1985 batch was allotted to the Madhya Pradesh Cadre and the next cadre in the cycle after Madhya Pradesh is the Maharashtra Cadre to which the applicant has rightly been allocated.

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8. The applicant has also filed rejoinder in which he has reiterated the contentions raised in the O.A. He has further claimed, as an alternative relief, notional seniority from the year 1985 for the purpose of pensionary benefits only without claiming any other benefits like pay and allowances, seniority, promotion, leave encashment etc. He has also given the instance of one Ms Neena Joshi from U.P. Cadre who after her marriage to one Sh. Khandekar came to be allocated to Maharashtra cadre when they married each other. It is also stated in the rejoinder that another vacancy in the Maharashtra cadre had arisen after the resignation of one Shri Ajitab Sharma.

9. We have heard the learned counsel for the parties at length and have perused the material on record.

10. Learned counsel for the applicant during the course of his arguments laid much emphasis on the fact that the applicant had been made to suffer for a number of years and even after the judgement of the Tribunal in his favor the respondents did not give him the relief promptly. He accordingly prays that the least the respondents should do would be to give him notional seniority from the initial date when the applicant had qualified in the examination.

11. In reply, the learned counsel for the respondents has extensively quoted from the judgement of the Tribunal dated 17.5.1994 in which it has been specifically held that the appointment order issued by the respondents in pursuance to that judgement would come into effect only from the date the applicant joins his service and he would get his seniority in the IFS only from the date of his appointment and not earlier to that (emphasis supplied). We find much force in the contention of the

High Court

learned counsel for the respondents. There is no rule which would permit grant of the benefit of notional seniority from a date earlier to the date of his actual appointment. We notice that while making submissions in OA 1266/90, i.e. the earlier O.A. filed by the applicant the learned counsel for the applicant had specifically stated at the Bar that the applicant was prepared to accept the seniority from the year of his appointment. That being so the appellant cannot now be allowed to turn round and say that for the purpose of computation of pensionary benefits he should be given notional seniority from the year 1985-86.

12. As regards the contention that there were vacancies in the Maharashtra cadre and that similar requests for change of cadre had been accepted by the respondents in the case of Mr. Khandekar & Ms. Neena Joshi, it would suffice to say that there are specific rules permitting change of cadre in case two officers of the All India Service marry each other. In such cases both of them can be allocated to a third cadre. There is no corresponding provisions regarding change of cadre in cases like that of the applicant even though there might have arisen some vacancies. It needs to be stated here that the mere existence of the vacancies in a particular cadre would not entitle an officer to allocation to that cadre on the ground that it is his home state cadre.

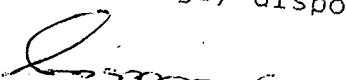
13. The Tribunal having already considered all the aspects of the case held in the judgement dated 17.5.1994 that the applicant would get seniority only from the date he actually joined the service. It is not open to the applicant to seek any enlargement of the scope of that judgement of the Tribunal and

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claim seniority from the year 1985-86 even if the seniority is claimed on notional basis and for the purpose of computation of pensionary benefits alone. 33

For the foregoing reasons we find no merit in this O.A. The O.A. is accordingly dismissed, but without any order as to costs.

since the O.A. has been disposed of as above, MAS No. 451/97, 2347/97 and 295/98 do not survive and are accordingly disposed of.


(S.P. Biswas)
Member (A)

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(T.N. Bhat)
Member (J)