

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1094 of 1996

New Delhi, dated this the 23rd March, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, 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,
Maulana Azad Road,
New Delhi-110011.

..... Applicant

(Applicant in person)

Versus

Union of India through
the Secretary
Dept. of Statistics
Ministry of Planning & Programme Implementation
Sardar Patel Bhawan
Parliament Street
New Delhi 110001.

..... Respondent

(By Departmental
Representative Shri J.K. Mehan S.O.)

ORDER

MR. S.R. ADIGE VC (A)

Applicant impugns respondents' two orders dated 4.1.96 (Annexure A 1 & Ann. A 2) and seeks the reliefs contained in Paragraph 8 of the O.A.

2. Applicant who belongs to the Indian Statistical Service, which is governed by the ISS Rules 1961 had initially filed O.A. No. 336/88 in C.A.T., Calcutta Bench challenging the promotion of certain SC/ST members of Service (who were made private respondents in the O.A.) from Grade IV to Grade III against vacancies reserved for SC/ST under Government of India's instructions, on the ground that reservation in respect of appointments by promotion was not permissible under rules. That O.A. was allowed by order dated 28.11.88 (Annexure A-10). The Tribunal however did not disturb the promotion given to the private respondents but directed that applicant be deemed

to have been promoted to Grade III w.e.f. the same date that the private respondents were promoted i.e. 24.11.87 and he would be placed above them in the Grade III Seniority List.

3. Against that order dated 28.11.88, Union of India filed Civil Appeal No. 3844/89 in Hon'ble Supreme Court.

4. Meanwhile by Notification dated 20.2.89 (Annexure A-11), Rule 13 ISS Rules 1961 was amended retrospectively w.e.f. 27.11.72, providing for appointments to the Service to be made subject to the orders relating to reservation for SCs/STs issued by Central Government from time to time.

5. The Supreme Court pronounced its judgment in C.A. No. 3844/89 on 14.7.94 (Ann. A-16) holding thus

"Respectfully following the law down by this Court in the judgments referred to and quoted above, we are of the view that the retrospective operation of the amended Rule 13 cannot be sustained. We are satisfied that the retrospective amendment of Rule 13 of the rules takes away the vested rights of Mohanty and other General Category candidates senior to respondents 2 to 9. We, therefore, declare amended Rule 13 to the extent that it has been made operative retrospectively to be unreasonable, arbitrary and as violative of Articles 14 & 16 of the Constitution of India. We strike down the retrospective application of the rule. In the view we have taken on the point it is not necessary to deal with the other contentions raised by Mohanty.

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The appeal is dismissed with costs.
 We quantify the costs of
 Rs.10,000/- to be paid by the Union
 of India to Mohanty - Respondent
 No.1."

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6. Thereupon in Contempt Petition No. 255/94 filed in C.A. No. 3844/89 the Hon'ble Supreme Court by its order dated 2.1.95 (Annexure A-17) while noting that costs of Rs.10,000/- had admittedly been paid to Shri Mohanty, granted 8 weeks time to Union of India to implement the Tribunal's order dated 28.11.88.

7. Pursuant to the above, respondents issued order dated 17.2.95 (Annexure A-18) ante dating applicant's promotion to Grade III from 2.4.93 to 24.11.87 and interpolating his name at the appropriate place in the Grade III Seniority List as of 1.7.92 issued vide respondents' O.M. dated 13.7.92. Thereafter respondents issued order dated 28.2.95 (Annexure A-19) promoting applicant to Junior Administrative Grade on ad hoc basis w.e.f. 26.10.92 and on regularisation w.e.f. 29.3.93 pursuant to his upgraded seniority.

8. Thereupon official respondents filed I.A. No. 9/95 seeking certain clarification from the Hon'ble Supreme Court with respect to their order dated 14.7.94. Upon that I.A. No. 9/95, the Hon'ble Supreme Court passed orders on 27.3.95 (Annexure A-20). In this order, the Hon'ble Supreme Court did notice that the Tribunal in its order dated 28.11.88 in O.A. No. 336/88 had given

relief only to applicant Shri Mohanty, but the Apex Court while dismissing the appeal filed by Union of India had granted relief to all those General Category officers who were similarly situated. It specifically took note of official respondents' contention that since a large number of candidates were involved it would not be in the administrative interest to promote all persons similarly situated to the higher cadres to which the private respondents had already been promoted, as that would involve creation of several hundreds of additional posts in Grade III, J.A.G., and non-functional selection grade, to accommodate all of them. Appreciating the difficulties, the Apex Court while observing that all efforts should be made to protect the promotions of SC candidates if possible, directed that if it became necessary to revert the SC candidates, the same could be done, but subject to the protection of the financial benefits which had already accrued to them. It was further observed that applicant would be entitled to the reliefs keeping in view his position in the seniority list as far as general category candidates are concerned, but if in the process he was reverted to the lower post, no recovery would be effected from him in respect of the money already paid to him.

9. Pursuant to the above, respondents reviewed many of their earlier orders/Notifications whereby promotions from Grade IV to Grade III had been made by providing reservation to SCs/STs). In supercession of their order dated 2.4.93 by which 138 Grade IV officers (including applicant Shri

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Mohanty) were promoted to Grade III from various dates, they issued impugned Annexure A-1 & A-2 orders dated 4.1.96. By these orders applicant's promotion to Grade III w.e.f. 2.4.93, subsequently antedated to 24.11.87 and his promotion to J.A.G. on ad hoc basis w.e.f. 26.2.92 and on regular basis w.e.f. 29.3.93 was cancelled, but without effecting any recoveries of the pecuniary benefits already paid to him, and he was treated as having been promoted to Grade III w.e.f. 8.4.93.

10. We have heard applicant Shri Mohanty in person and Shri Mehan, departmental representatives on behalf of respondents. We have perused the materials on record and given the matter our careful consideration.

11. In relief 8(1) applicant seeks a declaration that reservation in promotion in ISS is ⁱⁿultra vires the Constitution of India, and he seeks a direction to restrain official respondents from giving reservation quota in promotion. In this connection he relies on grounds 5.27 to 5.31 (both inclusive) of this O.A. A perusal of the Hon'ble Supreme Court's judgment dated 14.7.94 in C.A. No. 3844/89 reveals that some of these grounds were also taken by applicant in that C.A. In that judgment, it is important to note that it was only the retrospective operation of amended Rule 13 which was struck down as being unconstitutional. The Apex Court did not hold that reservations in promotion to I.S.5. pursuant to

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the aforesaid amendment to Rule 13 to be ultravires ~~per~~se the Constitution. If indeed reservation in promotion in ISS was unconstitutional, the Apex Court would doubtless have held so in its judgment dated 14.7.94, and official respondents would have been restrained from providing for reservation quota in promotion. In the absence of any such finding in the judgment dated 14.7.94 it is clear that reservation in promotion in ISS is not unconstitutional.

12. It bears notice that applicant had sought similar relief to paragraph 8(1) of O.A. No. 2488/90 in as much as he had sought quashing of Rule 13 ISS Rules as amended by Notification dated 20.2.89. The C.A.T., P.B. in its order dated 24.4.95 disposing of that O.A. noted that the retrospectivity given to that amendment had already been quashed by the Apex Court by its order dated 14.7.94 and applicant's surviving grievance was the constitutional validity of the amended rule itself. A perusal of Paragraphs 12, 13 & 14 of that order dated 14.7.94 reveals that the grounds advanced by applicant to challenge the constitutional validity of amended Rule 13 were decisively rejected by the Bench. It is no doubt true that the aforesaid O.A. was eventually allowed, effective from 16.11.97, but ~~was~~ that was in the special circumstances occasioned by the Hon'ble Supreme Court's ruling in the case of Indra Sawhney and Others Vs. Union of India & Others and connected cases delivered on 16.11.92,

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and well within the five year period, the Constitution had been amended by the insertion of Article 16(4A) on 17.6.95. Indeed, with the introduction of Article 16 (4A) the very basis of their ruling in Indra Sawhney's case (supra) stood removed, as interpreted by the Apex Court themselves in Commissioner of Commercial Taxes Vs. G.S. Rao (1996) 7 SCC 512.

13. It is clear that applicant's challenge to reservation in promotion to ISS as being unconstitutional, has been considered, but has not been allowed, both by C.A.T., P.B. in its order dated 24.4.95 in O.A. No. 2498/90, as well as by the Apex Court in its judgment dated 16.7.94 in C.A. No. 3844/89. We are bound absolutely by those rulings and it is not open to applicant to seek the same relief in this O.A. Relief 8(1) is, therefore, rejected.

14. During hearing applicant asserted that the other reliefs were consequential to Relief 8(1). Indeed if they were not, the O.A. itself would be hit by Rule 10(1) C.A.T. (Procedure) Rules, and that by itself is sufficient to reject the other reliefs summarily. However, we have examined these other reliefs also.

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15. These other reliefs are mainly predicated upon applicant's contention that for the implementation of the Hon'ble Supreme Court's judgment dated 16.7.94 in O.A. No. 3844/89, respondents were not legally required to review all the promotions made earlier, culminating in the issue of impugned A-1 & A-2 orders dated 4.1.96. Indeed this is the pith and substance of reliefs 8(v) and 8(vi).

16. The grounds taken in support of these contentions are that the benefit of the judgment in C.A. no. 3844/89 was extended only to officers similarly situated to applicant and senior to respondents 2 to 9 in the O.A. before C.A.T., Calcutta Bench and not all general category officers; the promotions made by earlier orders had not been challenged by any party and could not be reviewed now as the same was barred by limitation; the benefits accrued to applicant could not be whittled away by respondents in the guise of implementing the clarificatory order dated 27.3.95; the Hon'ble Supreme Court's order dated 27.3.95 required respondents to make all efforts to protect the promotions of the reserved category officers; the Hon'ble Supreme Court's order dated 27.3.95 did not call for review of promotions made prior to 24.11.87; the other contentions raised by applicant before the Hon'ble Supreme Court which were not specifically discussed in their orders became relevant consequent to ^{applicants} ~~was~~ supercession as

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a result of a review of the earlier promotions; the impugned promotion orders were not based on any seniority ~~list~~ ^{list} which was a mandatory requirement of Rule 8(1)(b)(1) I.S.S. Rules; the Hon'ble Supreme Court's judgment dated 16.7.94 could not ^{be} modified on the basis of a clarificatory application; the clarificatory order could not grant relief to even those who had retired many years ago; the respondents could not have raised the new question of other general category officers in its clarificatory application before the Hon'ble Supreme Court; officers who had been superceded earlier by reserved category officers had not challenged their supercession, and those claims were barred by limitation; if the Hon'ble Supreme Court's order dated 27.3.95 was interpreted so as to revert applicant, who had single handedly fought the case, it would not perpetuate the ends of justice; the reserved category officers if reverted would lose the benefit of ^{having} ~~not~~ worked in higher posts since 1987 which would violate Article 21; respondents had reviewed promotions to Grade III on the basis of a draft seniority list circulated on 27.1.93, which had deliberately not been finalised for three years; some officers promoted on different dates were not eligible for promotion on those dates; the promotions were in contravention of Rule 8(1) b(1) I.S.S. rules read with Paragraph 6.21 (b) of consolidated instructions for the D.P.C;

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the promotions were in violation of Paragraph 6.4.4 of those consolidated instructions; because the ACRs were procured at the last minute thus vitiating the process; the respondents did not disclose the full facts to ~~the~~ DPC; the mandatory approval of I.S.S. Board was not taken before making the promotions or indeed the reversions; there is no provision in the I.S.S. Rules for reverting an officer; the review was not properly done and many names have been omitted.

18. We have considered these grounds carefully.

19. We have already noticed ^{that} the Apex Court in its judgment dated 16.7.94 in C.A. No. 3844/89 had held that by the retrospective amendment of Rule 13, the vested right of applicant as well other general category officers senior to the private respondents had been adversely affected. In its clarificatory order dated 27.3.95 it ^{had} observed that while in O.A. No. 336/88 the Tribunal had given reliefs only to applicant, they themselves by their order dated 16.7.94 had granted relief to all the general category officers who were similarly situated. It appreciated the difficulties highlighted by Respondents in their submissions that promotions of persons similarly situated to higher cadres (without effecting necessary reversions) would entail the creation of several hundreds of posts at various higher levels which would not be in the administrative interest.

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Accordingly while observing that all efforts should be made to protect the promotions of SC candidates if possible, it directed that if it became necessary to revert the SC candidates, the same could be done, but the financial benefits that accrued to them would have to be protected, as being personal to them. Similarly in the case of applicant Shri Mohanty the Apex Court observed that he would be entitled to the relief keeping in view his seniority so far as the general category officers were concerned, but if in the process he wasre reverted to a lower post no recoveries of the money already paid to him were to be made.

19. In the light of the Hon'ble Supreme Court's own directions referred to above, particularly those contained in its clarificatory order dated 27.3.95 extending the benefit of the Tribunal's order dated 28.11.88 in O.A. No. 336/88 to all those general category officers similarly situated as applicant, and its recognition that the implementation of those directions might entail reversions, applicant cannot legitimately pray, as he has sought to in relief Paragraph 8(ii), that the benefits flowing to him as a result of the Tribunal's order dated 28.11.88 and the Hon'ble Supreme Court's judgment dated 16.7.94 in C.A. No. 3844/89, could not be altered. No convincing materials have been furnished by him to establish that the other general category officers covered by the impugned

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order dated 4.1.96 were not similarly situated as himself [relief Paragraph 8(iv)], or that despite the clear directions of the Hon'ble Supreme Court to extend the benefits to all the general category officers similarly situated as applicant, it was open to respondents to deny those benefits to general category officers, who had not expressly challenged their supersession by reserved category officers (relief Para 8(v)). Indeed in the light of Hon'ble Supreme Court's orders whereby the retrospective operation of amended Rule 13 was struck down, and to that extent the promotions through reversions given in Grade III prior to 20.2.89 were found to have been illegal, it cannot be said that the review of the promotions made earlier in Grade III undertaken by respondents was illegal or arbitrary (relief Para 8(vi)).

2D. Under the circumstances none of the grounds advanced by applicant and referred to in paragraph 17 above advance applicant's claims in so far as Reliefs 8(ii), (iv), (v) & (vi) are concerned, which are also accordingly rejected.

2F. Lastly we come to relief 8(iii) wherein applicant has sought quashing of impugned Annexure A-I and Annexure A-2 order dated 4.1.96. By Annexure A-2 order dated 4.1.96, applicant's retrospective promotion to Grade III w.e.f. 24.11.87 and his promotion on ad hoc basis to J. A.G. w.e.f.

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26.10.92 and on regular basis to JAG w.e.f. 29.3.93 has been cancelled after giving him the benefit of protection of the monetary benefits already paid to him. This Annexure A-2 order dated 4.1.96 contains a recital of the facts and circumstances noticed above, including relevant extracts of various Court orders. On the same day respondents had issued Annexure A-1 order dated 4.1.96, giving applicant (at Sl. No. 89 of Paragraph 7(vi)) revised date of promotion to Grade III as 8.4.93. This very para of Annexure A-1 order dated 4.1.96 had been challenged by applicant in O.A. No. 317/96. That O.A. was heard and disposed of after lengthy hearing by order dated 2.2.98, with the following directions:

" 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 of 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.

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22. Respondents, therefore, issued revised order dated 31.8.98 of promotions to Grade III.

23. Meanwhile applicant filed C.P. No. 214/98 alleging wilful disobedience of the Tribunal's order dated 2.2.98. That C.P. was dismissed by order dated 4.2.99 after noticing respondents' order dated 31.8.98. Thereupon ~~applicant filed~~ ^{applicant filed} another C.P. bearing No. 230/99 alleging wilful non-compliance of the Tribunal's order dated 2.2.98 in O.A. No. 317/96 which was also dismissed by order dated 1.12.99.

24. It is thus clear from the foregoing that impugned Annexure A-2 order dated 4.1.96 warrants no interference, and as regards impugned Annexure A-1 order dated 4.1.96 to the extent that it affected applicant, he had challenged the same in O.A. No. 317/96 which had culminated in issue of revised order dated 31.8.98 which has not been impugned in this O.A.

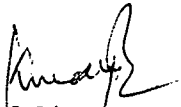
25. During hearing applicant asserted that if respondents were directed to recalculate the ~~vacancies~~ ^{vacancies} at higher levels also, in the same manner as they had recalculated the vacancies in Grade III pursuant to the Tribunal's order dated 2.2.98 in O.A. No. 317/96, there was a possibility that applicant would be promoted to higher levels sooner. No foundation has been laid in the present O.A. to issue such a direction to respondents, nor has such a relief been expressly


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claimed. It was open to applicant to have amended the relief clause suitably if he sought such relief in this O.A. after pronouncement of the order dated 2.2.98 in O.A.- No. 317/98, but he did not do so. Under the circumstances no such direction is warranted at this stage.

26. In the result the O.A. is dismissed. No costs.


(Kuldip Singh)
Member (J)


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

/GK/