

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1117/97

New Delhi this the 21st day of September, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mr. Govindan S. Tampi, Member (Admnv)

M.P. Gavai

...Applicant

(By Advocate Sh. G.D. Gupta)

-Versus-

Union of India & Others


...Respondents

(By Advocate Sh. N.S. Mehta)

1. To be referred to the Reporter or not? YES/NO

2. To be circulated to other Benches of
the Tribunal?

YES/NO


(V. Rajagopala Reddy)
Vice-Chairman (J)

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M.P. Gavai,
S/o Sh. P.G. Gavai,
R/o B-31,
External Affairs Hostel,
Kasturba Gandhi Marg,
New Delhi.

...Applicant

(By Advocate Shri G.D. Gupta)

-Versus-

Union of India through the
Secretary to the Government
of India, Ministry of
External Affairs,
South Block, New Delhi.

...Respondent

(By Advocate Shri N.S. Mehta)

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant, an Under Secretary Grade 'A' in the Indian Foreign Service (IFS) - Branch 'B', seeks a direction that he is entitled to have been promoted to senior scale in 1992 and assign^{ed} the year of allotment as 1984, under Rule 15 (4) of the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion), Rules, 1961 (for short the Rules of 1961).

2. The undisputed facts in brief : the applicant was initially appointed as Section Officer in I.F.S. Branch 'B' in 1980. He was promoted to the next higher grade to the post of Under Secretary Grade I in Branch 'B' in 1984. However, due to the pendency of litigation, in the High Court, Central Administrative Tribunal as well as in the Supreme Court, on the basis of the revised select list, the applicant's promotion was

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reviewed and he came to be promoted to Grade 'I', Branch 'B', w.e.f. 8.9.86 vide notification dated 19.9.94. Rules of 1961 are applicable for recruitment to Senior Scale of I.F.S. Branch 'A'. Under the 1961 Rules, the posts are filled only by promotion. A DPC was held in April 1986 and a combined select list of officers approved for promotion for the years 1991-92, 1992-93, 1993-94 was prepared and the name of the applicant was shown at serial No.8 and he was assigned the year of allotment as April, 1987. Promotion orders were issued to the applicant on the basis of the above select list for the years 1992-93, 1993-94 w.e.f. 27.4.95 vide the impugned orders dated 2.11.95, to Senior scale IFS Branch 'A'. He was assigned 1987 as the "year of allotment". The applicant is aggrieved on both counts. He pleads that he was entitled to have been promoted w.e.f. 1992 and also assigned the year of allotment as 1984 instead of 1987.

4. According to the learned counsel for the applicant Sh. G.D. Gupta, though the applicant was entitled for the year of allotment as per Rule 15 (4) (i) of 1961 Rules the year of allotment as 1983, since the seniors to have already been allotted the year of allotment as 1984, he could be assigned the year of allotment 1984 and not earlier than his seniors, as per the first provisions of sub-rule 4 of Rule 15. However, in view of the second proviso to Rule 15 (4) as it lays down the condition that the year of allotment so determined should not be earlier than '8 years preceding the date of actual promotion', he was given the year of allotment as 1987. The learned counsel, therefore,

persuasively argues that he was denied the right of assigning the year of allotment of 1984 only due to the delay in holding the DPC for promotion to the Senior Scale. Had the DPCs were held immediately after he was promoted to Grade 'A', the second proviso would not have in his way.

5. Secondly, he argues that the process of selection to senior scale by way of bunching of all the vacancies that arose since 1992-93 and promoting the applicant with prospective effect from 1995 is wholly irregular. As the applicant was considered against the vacancy of 1992-93 and selected he should have been promoted w.e.f. 1992 and not from the date of holding DPC in 1995 and the year of allotment should be assigned considering 1992-93 as the date of promotion.

6. Rebutting these arguments, Shri N.S. Mehta, learned counsel for the respondents submits that in fact there was no delay in holding DPC and that the applicant was not entitled to deemed promotion w.e.f. 1992. It is further contended that the year of allotment was properly assigned as per Rule 15 (4) of the 1961 Rules.

7. We have considered the arguments advanced by either side. Rule 15 (4) of the 1961 Rules is the only provision which deals with assigning of the year of allotment to Senior Scale officers and to understand how the 'year of allotment' is assigned, we have to notice the same, which reads as under:

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"15(4) When an officer is promoted to the senior scale of the service in accordance with sub-rule (2) or sub-rule (4)* of rule 13, he shall be given a year of allotment as follows:-

(i) if he is promoted from Grade I of the Indian Foreign Service Branch 'B' one corresponding to a date three years prior to the date from which he was continuously holding a post in Grade I of the Indian Foreign Service Branch 'B' or an equivalent or a higher post;

*(ii) if he is promoted from the Indian Information Service-one corresponding to a date from which he was continuously holding a post in the Indian Information Services in a capacity not lower than that of an Information Officer:

Provided that clauses (i) and (ii) shall not so apply as to make any promoted officer senior to any other officer promoted under sub-rule (2) of sub-rule (4) of Rule 13 on an earlier occasion, and in the event that this occurs, the year of allotment shall be increased to that of the lower officer in the Gradation List promoted under sub-rule (2) or as the case may be of sub-rule (4) or rule 13:

Provided further that the year of allotment so determined shall not be earlier than the year, 8 years preceding the date of actual promotion."

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8. The first step to be taken for the purpose of assignment of the year of allotment as seen in the sub-Rule (4), is provided in clause (i) of sub rule (4). The year of allotment so arrived at, however, should be read with the two provisos to sub rule (4). As per clause (1) of sub rule (4), an IFS officer promoted from grade I of IFS Branch 'B', is entitled for the assignment of the year of allotment corresponding to the date "three years prior to the date from which he was continuously holding a post in Grade I or an equivalent or a higher post." But the date so arrived at under clause (i) of sub rule (4) will have to be so applied as not to make the promoted officer senior to any other officer promoted earlier. Again under the second proviso the date so determined should not be earlier than the year "8 years preceding the date of the actual promotion". As per the above calculations, since the applicant has been promoted in 1986 to Grade I, under clause (i), he is entitled for the year of allotment of 1983, as he was working in Grade I from 1986. But, as it is stated that his senior officer has been given the year of 1984, he can only be assigned the year of allotment of 1984. But then the second proviso operates and since he was promoted actually in 1995, his year of allotment cannot be assigned earlier than 8 years preceding the date of the 'actual promotion', i.e., 1995. Accordingly, the respondents rightly assigned 1987 as the year of allotment.

✓ 9. The above calculation, there is no controversy, was as per sub rule (4). However, it is the grievance of the applicant that the Government has taken its own time in making promotion to the senior scale, for no good reason and when the question arises in determining the year of allotment, it takes the plea that the year of allotment cannot be earlier than 8 years preceding the date of promotion. Thus, the grievance is as to the delay in holding DPC. It is, therefore, to be seen whether the respondents could be faulted for any conscious delay on their part in holding the DPC. If we look into the counter-affidavit, it appears to our mind that the respondents have indeed, with all expedition held the DPC after the seniority list in the post of Under Secretary has been finally revised. A review in consultation with the UPSC was held on various dates in July, 1994 on 29.7.94. The applicant was promoted to the post of Under Secretary w.e.f. 8.9.86 on the basis of the review DPC for the year 1986. Immediately thereafter the DPC was constituted for promotion to the senior scale in 1995 and the applicant was promoted w.e.f. 27.4.95. Hence, it cannot be said that the respondents have wilfully delayed to hold meeting for the purpose of selection. We are not persuaded to accept this contention.

10. There appears to be, however, force in the second contention. It is specifically pleaded that the applicant has been considered by the review DPC for promotion against the vacancies which arose for the year 1992-93 and was selected and hence he was entitled to be promoted w.e.f. 1992-93 and not from 27.4.95, the date

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✓ of the review DPC. It was only stated in the counter-affidavit that the "DPC meetings to review the Under Secretaries promotion panel for 1990, 91-92, 92-93 and 93-94 were held in April 1995 in consultation with UPSC and final meeting chaired by a member of UPSC was held on 27.4.95. The applicant was promoted to the Senior Scale of IFS on the basis of recommendations of these DPC meetings with effect from 27th April, 1995." The specific allegation regarding his selection for 1992 vacancy, was not controverted. The averments make it clear that though the review DPC was held in 1995, it was held for the purpose of filling up the yearwise vacancies from 1990 onwards till 1993-94.

11. A perusal of the records, including minutes of the DPC meeting held on 27.4.95 makes it plain that indeed yearwise panels have been prepared against the vacancies of respective years. Had the DPC been held as and when the vacancies arose in respective years the officers selected, yearwise, would have been promoted w.e.f. those years. Since promotions were to be reviewed on account of the revision of seniority list for some reason in view of the litigation that was pending in respect to the seniority of Under Secretaries, the promotions to the posts of Under Secretary as well as to the Senior Scale could not be finalised, which necessitated holding of the review DPC for Under Secretary in July, 1994 and for the Senior Scale in April, 1995. The name of the applicant was now shown in the consolidated panel in 1992-93 and 1993-94. Hence, the applicant, in our view, is entitled for promotion w.e.f. 1992-93.

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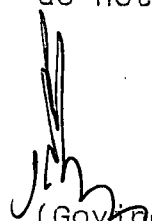
12. We are also supported in our view by the several judgements of the Supreme Court, cited by the learned counsel for the applicant. To cite a few, in Y. V. Rangaiah & Others v. J. Sreenivasa Rao and Others, 1983 (3) SCC 284 and Union of India & Others v. N.R. Banerjee & Others, 1997 (9) SCC 287, it was held that the panel for promotion should be prepared every year in accordance with the extant rules; Vinod Kumar Sangal v. Union of India & Others, 1995 (4) SCC 246, where it was held that simultaneous selection to vacancies occurring in different years bunching together all the vacancies, as invalid, the court held that separate selection for vacancies for each year should have been made. In the instant case, however, the promotions were made yearwise against the vacancies available in respective years. As stated supra, actual holding of DPC has no relevance to fix the date of promotion. The date of vacancies should be the criterion on which the date of promotion should be given effect to. Hence, 1992-93 should be the deemed date of promotion of the applicant. The impugned notification dated 2.11.95 is, therefore, quashed in so far as it shows the actual date of promotion as 27.4.95.

13. It now falls for us to consider whether the applicant is entitled for the assignment of year of allotment, taking into consideration the 1992 as the date of promotion to Senior Scale. In that case his year of allotment could be 1984 as it would not be earlier than 8 years preceding the date of promotion. The learned counsel for the respondents, Shri N.S. Mehta, however, lays stress upon the expression 'date of actual

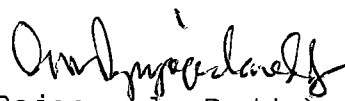
promotion' occurring in the second proviso. According to him as 1992 being the deemed date of promotion but not the 'date of actual promotion', it has no relevance for assigning the year of allotment. There is force in this contention. Though, no material is placed before us as to the significance in using the expression 'date of actual promotion' in the second proviso, but it is trite law that all the words used by the legislature in the rule or other provision should not be held redundant and all the words should be given their plain meaning. It cannot be disputed that the date of promotion shown in the impugned notification is the 'actual date of promotion.' It, therefore, follows that the deemed date of promotion is of no relevance and as per the second proviso, the applicant cannot be given the year of allotment earlier than 8 years preceding 'the actual date'. We do not, therefore, find any infirmity in the impugned order, assigning the 1987 as the year of allotment. The contention of the learned counsel in this regard is rejected.

14. In the result, the OA partly succeeds. The respondents are directed to promote the applicant from the date of ^{arising of} the vacancies, against which he was recommended for selection to the senior scale and it shall be his deemed date of promotion. The impugned notification dated 2.11.95 is modified to that extent.

15. The OA is accordingly allowed in part. We do not, however, order costs.


(Govindan S. Tampi)
Member (Admnv)

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(V. Rajagopala Reddy)
Vice-Chairman (J)