

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 2453/93 and
I.A. No. 882/94 899/93 and 94

DATE OF DECISION 3.10.97

Shri H A Arfi and Petitioner
Shri G.K. Dixit,
Shri K C Mittal and Shri R K Khanna Advocate for the Petitioner(s)
Versus
Union of India Respondent
Shri V.S.R. Krishnas Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr. Jose. P. Verghese, VC (J)

The Hon'ble Mr. S. P. Biswas, M(A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?

(Dr. Jose P. Verghese)
VC (J)

CENTRAL ADMINISTRATIVE TRIBUAL
PRINCIPAL BECH: NEW DELHI

O.A. No. 2453/93
and
882/94

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New Delhi this the 32nd Day of October, 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

O.A. No. 2453/93

Shri H.A. Arfi,
Son of Late Shri Anwar Ali,
Resident of 47/9, Rajpur Road,
Delhi-110 054

Petitioner

(By Advocate: Shri K.C. Mittal
and Shri R.K. Khanna)

-Versus-

1. Union of India, through
Secretary to the
Government of India,
Ministry of Home,
New Delhi-110 001.

2. The Union Public Service Commission,
through its Secretary,
Dholpur House,
New Delhi.

3. Secretary,
Department of Personnel & Training,
Government of India,
New Delhi.

Respondents

O.A. No. 882/94

Shri G.K. Dikshit,
5 Kaka Nagar,
New Delhi-110 003.

Petitioner

(By Advocate: Shri K.C. Mittal
and: Shri R.K. Khanna)

-Versus-

1. The Govt. of India,
Ministry of Home Affairs,
Through Director, CPS,
North Block,
New Delhi.

2. The Secretary,
Dept. of Personnel & Training,
Government of India,
New Delhi.

Respondents

(By Advocate: Shri VSR Krishna)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

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The petitioner in OA No. 2453/93 was appointed as Joint Secretary (Home), Delhi Administration, a cadre post w.e.f. 24.10.1983 and appointed as Deputy Secretary in the Ministry of External Affairs w.e.f. 16.11.1983. He worked in Kuwait Embassy from 21.2.1984 to June, 1987 as First Secretary which is an equivalent to the post of Deputy Secretary, Ministry of External Affairs, Government of India. He was included in the select list, approved by the Union Public Service Commission on 6.3.1985 and remained on a select list of officers till regular appointment to IAS was made on 29.7.1987. The claim of the petitioner in this application is that even though he has held a cadre post of equivalent senior post continuously from 24.10.1983, he was denied the benefit of officiation of a senior post equivalent to IAS cadre post, in terms of duties, responsibilities and pay for the purpose of seniority in IAS in accordance with rules. It was stated on behalf of the petitioner that the condition of utilisation of SDR for the purpose of seniority in IAS was rigidly applied in this case while the same was removed in the cases of two officers junior viz., Shri Gopal Dixit and Smt. Savitri Kashyap. It is pertinent to mention here that Mr. Dixit is the petitioner in OA No. 882/94. The petitioner Shri Arfi is claiming the benefit officiation on an equivalent cadre post as admissible under explanation (4) below Rule 3(3)(b) of the IAS Seniority Rules of 1954, which was denied to him on the on the alleged over utilization of the SDR

and while the same was granted to the petitioner in OA No. 882/94. It was also stated by the petitioner that the condition of utilisation of SDR or over utilization of the same was not always applied to so rigidly in all cases. It was relaxed in the case of the petitioner in OA No. 882/94 and in the case of one Shri S.P.Raje of Maharashtra, the benefit of the ex-cadre post was granted, without applying the rule of the over utilisation of SDR. Accordingly, the petitioner is claiming that his seniority should be re-fixed in accordance with the crucial date of 6.3.1985 that being the day Union Public Service Commission has approved the select list containing his name and also claiming the consequential benefits of refixation of his entitlement of 1980 as the year of allocation.

2. The petitioner in OA No. 882/94, is also claiming his seniority w.e.f. the crucial date on which he started to perform the duties of an IAS post viz., 22.5.1985 and consequently makes him entitled to 1980 as the year of allotment. According to him, his name appeared in the Select List for promotion to IAS in the year 1985 on the recommendation of the Screening Committee in December, 1984 and was appointed on the IAS cadre post of Additional District Magistrate, Delhi w.e.f. 22.5.1985 vide Delhi Administration Order No. F.30/1/85-SI dated 22.5.1985. He reported to the Govt. of Goa w.e.f. 13.2.1986 again on an IAS cadre post of Commissioner (Sales-Tax, Entertainment Tax and Excise) in pursuance of transfer order issued by the Ministry of Home Affairs by an order dated 7.6.1986. Thereafter, by an order dated 13.2.1986, the Ministry

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of Home Affairs passed an order transferring the petitioner to Andaman and Nicobar where he reported for duty in the IAS cadre post of Secretary to the Administration on 24.7.1986 and continued to hold the said post till his regular appointment to IAS vide order of DOP&T dated 29.12.1987. Even though he continued to hold IAS cadre post since 22.5.1985, it was submitted by the petitioner, that the credit of this period of holding the IAS cadre post was not given to the petitioner while his seniority was fixed in IAS.

3. It is pertinent to mention that the petitioner in O.A 882/94 became a member of DANI Civil Services from 17.1.1966 and had rendered more than 20 years of services at the time when his appointment was formerly made to IAS and it was stated that in accordance with the DOP&T Notification dated 18.1.1988 weightage of at least six years should have been given to the petitioner, both for the purpose of assignment of year of allotment to IAS as well as seniority. In short the petitioner in OA No. 882/94 is claiming the period between 22.5.1985 the date on which he started officiation on the cadre post of an IAS and the 12.7.1986, the date on which the benefit was actually given to the petitioner by the respondent, for the purpose of fixation of the seniority of the petitioner in IAS.

4. The respondent, on the other hand, rejected the representation of the petitioner in OA No. 882/94 on the ground that 12.7.1986 has been correctly fixed in the case of this petitioner since that was the date

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when the petitioner had joined duty after availing of earned leave for 22 days w.e.f. 20.6.1986 to 11.7.1986 and according to the respondents the petitioner was rightly denied the benefit of continued officiation w.e.f. 22.5.1985 due to a break in period, during this leave period. It was stated that appropriate orders have been passed to consider this leave period as a break in service and in the light of the said order, the petitioner could not have been granted the benefit of continued officiation w.e.f. 22.5.1985 and he has been granted the benefit of his seniority from the date on which he joined the office after availing of earned leave of 22 days viz. 12.7.1986. The petitioner in his rejoinder has stated that he has not received any intimation from the Ministry of Home Affairs or Delhi Administration or any other authority with regard to any termination of his cadre officiation during the periods and the same according to him is not issued to him at any time, and that his seniority was wrongly fixed w.e.f. 12.7.1986 on the basis of over utilisation of SDR.

5. It was stated by the petitioner that by an order dated 4.3.1993, the Presidential Order was issued wherein necessary utilisation of SDR under the Rules have been conveyed to the petitioner. It was stated in the said was as per the Rule 3(3)(ii) of IAS regularization of Seniority Rules of 1987. In para 2 of the said order it was stated that while calculating the year of allotment, the period of officiation in the said cadre post of the officers was not in fact taken into account due to over-utilisation of SDR, but the

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petitioner along with Smt. Kashyap submitted their representation stating that her seniority was fixed under strict application of some Rule, which remained operative of a short period. Had their appointment to IAS had been delayed just by three weeks, they would have been covered by the weightage formula for fixation of seniority? They had also represented that the substantive vacancies in the IAS against which they were appointed had become available long before their actual appointment and it was stated in the said order that the representation and the undue hardship stated by the petitioner due to strict application of Rule 3 (3) (ii) of Seniority Rules was considered by the President and the President was pleased to exercise the power available to him under Rule 3 of the All India Services (Conditions of Service Residuary Matters) Rules, 1960 for relaxing the requirement of Rule 3 (3)(ii) of the Seniority Rules as to count the period of officiation in the cadre post for determination of the year of allotment in IAS in the case of both Mr. Dixit as well as Smt. Kashyap. Thus, the ground of over utilisation of SDR was not available against the petitioner in this OA for denying him the benefit of continued officiation w.e.f. 22.5.85. The said benefit was denied only because of the consideration of the respondents that there was a break in service during the period of 22 days of Earned Leave w.e.f. 20.6.86 to 11.7.86. But for this decision the petitioner would have obtained the consideration of his past service of continued officiation w.e.f. 22.5.85

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for the purpose of fixing of his seniority in I.A.S. and as well as for consideration for 1980 as the year of allotment.

6. The respondents had made elaborate arguments at the time of hearing of these petitions and stated that three different sets of Rules govern the fixation of seniority of officers appointed through the different sources. The officers of the various State Services other than the State Civil Services are appointed to the IAS by selection in accordance with the provisions of Rule 4 (1)(c) of the I.A.S. (Recruitment) Rules, 1954 readwith provisions of I.A.S. (Appointment by Selection) Regulations, 1955. The members of the State Civil Services are appointed to the I.A.S. by promotion under Rule 4 (1) (b) of the Recruitment Rules readwith the provisions of the I.A.S. (Appointment by Promotion) Regulations, 1955. The year of allotment (YOA) of the officers appointed to the IAS by promotion prior to 6.11.1987 was determined in accordance with the provisions of Rule 3 (3) (b) of the IAS (Regulations of Seniority) Rules, 1954, hereinafter referred to as the Seniority Rules. The IAS (Regulation of Seniority) Rules, 1954 were replaced by the IAS (Regulation of Seniority) Rules, 1987 with certain modifications of the then existing seniority rules.

7. The 1954 Rules read as under:-

"(3)(b) When the officer is appointed to the Service by promotion in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, the year of allotment of the junior most among the

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officers recruited to the Service in accordance with Rule 7 of those Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former:

Provided that the year of allotment of an officer appointed to the Service in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the service in accordance with rule 7 of those rules so started officiating, shall be determined ad hoc by the Central Government in consultation with the State Govt. concerned.

Explanation 1 - In respect of an officer appointed to the service in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for purposes of determination of his seniority, count only from the date of the inclusion of his name in the Select list or from the date of his officiating appointment to such senior posts, whichever is later."

"(3)(b) Where the officer is appointed to the Service by promotion in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, the year of allotment of the junior most among the officers recruited to the Service in accordance with Rule 7 of those Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former:

Provided that the year of allotment of an officer appointed to the Service in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the service in accordance with rule 7 of those rules so started officiating, shall be determined ad hoc by the Central Government in consultation with the State Govt. concerned.

Explanation 1 - In respect of an officer appointed to the service in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for purposes of determination of his seniority, count only from the date of

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the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior posts, whichever is later."

8. From the above rule position it may be clear that for the purpose of determination of seniority of an officer the period of his continuous officiation in a senior post can be counted only from the date of the inclusion of his name in the Select list or from the date of his officiating appointment to such senior posts whichever is later. Explanation 2 to the said rule provided that "an officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion, a senior post otherwise than as a purely temporary or local arrangement." Explanation 3 to the said rule stipulated that "an officer shall be treated as having officiated in a senior post during any period in respect of which the State Govt. concerned certifies that he would have so officiated but for his absence on leave or training." Explanation 4 to the said rule provided that "an Officer appointed to the Service in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules shall be treated as having officiated in a senior post during any period of appointment to a non cadre post if the State Govt. has certified within three months of his appointment to the non-cadre post that he would have so officiated but for his appointment, for a period not exceeding one year, and with the approval of the Central Govt., for a further

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period not exceeding two years, to a non cadre post under a State Govt. or the Central Govt. in a time scale identical to the time scale of a senior post."

9. It was further stated on behalf of the respondents that for counting the period of officiation in a senior post for purposes of fixation of seniority the following conditions should be satisfied:

- (a) The officiating appointment can be counted only from the date of the inclusion of the name of the officer in select list:
- (b) There should not be any break of reversion from the date of appointment to the date of confirmation;
- (c) If during the period of officiation the officer went on leave or training then the State Govt. concerned should have certified that but for his absence on leave or training he would have continued to officiate in the said post;
- (d) If the officer had officiated in a non cadre post his services in that non cadre post can be counted for purposes of fixation of seniority only if the State Govt. had certified that he would have officiated in a senior post but for his appointment to a non cadre post within three months of his appointment. If the period of appointment to a non cadre post exceeded one year then such a certificate can be given only with the approval of the Central Govt. for a period of two years.

10. Thus, the respondents contention was that the decision with regard to the petitioner in OA No. 2453/83 was correctly taken as 29.9.1986 that being the correct crucial date for determination of his year of allotment in IAS and according to which the year of allotment granted to the petitioner was 1982.

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Similarly in OA No.882/94, the petitioner therein was also granted and was considered the date of 12.7.1986 as the crucial date for fixation of seniority and was allotted 1983 as the year of allotment. It was further stated that in case of petitioner in OA No.2453/94 that the petitioner therein could not have been given a higher seniority since the same was denied to the petitioner in OA 2453/93 being senior to the petitioner in OA 882/94.

11. We have considered the rival contention of both the parties in both the OAs. Extensive arguments were advanced at the Bar for both the parties. The settled law as on today, according to the submission of the counsel, is that the officiating appointment of a candidate for promotion can be counted only from the date of the inclusion of the name of the officer in the Select List. Admittedly, both the petitioners names were included in the Select List w.e.f. 6.3.1985. Thus, but for certain other factors intervening the seniority of the petitioners should have been considered w.e.f. the date on which their names were included in the Select

12. In the case of the petitioner in OA 2453/93, date of inclusion of the name of the petitioner in the Select List was not considered for the purpose of considering the seniority and fixation of the year of allotment for the reason that the appropriate government had not issued the necessary orders as to the prior approval of the Central

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Government, existence of vacancies in promotion quota as well as a certificate stating that the said period of continuous officiation was not affected by over utilisation of state deputation reserved quota by the government. In the case of the petitioner in OA No. 882/94, the reason why the officiating appointment could not be counted from the date of inclusion of the name of the officer in the said Select List was for the reason that there was a notional break in his continuous officiation due to the fact that the petitioner had joined duty after availaing earned leave for 22 days w.e.f. 20.6.1986 to 11.7.1986. We are of the opinion that by availing earned leave for 22 days, cannot by any stretch of imagination, we consider a break in service or a break in the period of continuous officiation. It is immaterial whether the order passed in this regard has not been challenged. Petitioner declines to have received any such order. In any case, an uncommunicated illegal order could not be the reason to deny the petitioner his statutory rights. Since the rule of over utilisation of deputation reserve quota have been already relaxed in the case of this petitioner, the denial of consideration of his officiating appointment w.e.f. the date of inclusion of the name of the officer in the Select List for the purpose of calculating the seniority could not be denied to this petitioner. We are of the opinion, therefore, the denial of the consideration of his date of inclusion in the Select List for the purpose of calculating his seniority and determination of the year of allotment, will have to be from the date on which his name has

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been included in the Select List viz., 1985 not the actual date of inclusion viz., 12.6.1986. The petitioner is entitled to all consequential benefits.

13. Similarly in the case of the petitioner in OA 2453/93 also has been denied the benefit of the continuous officiation from the date of the inclusion of his name in the Select List for the purpose of consideration of his seniority for the reasons stated above.

14. We are of the opinion that the necessary orders to be passed by the Government as stated above should have been issued without reference to any adverse inference against the petitioner. The petitioner has no role to play, it is for the Government to issue appropriate orders as and when necessary in the circumstances of the case. As far as the petitioner herein is concerned that he could not have denied under any of the rules the benefit of considering the date of inclusion of his name in the Select List, be reckoned for the purpose of determination of his seniority and year of allotment.

15. This controversy has been finally concluded in the case of Union of India Vs. G.N. Tiwari reported in 1986 (1) SCC 89 wherein it was held that even though under the rules the Central Government's approval such appointment is stated to be necessary, continuous period of officiation in the cadre must be reckoned and given benefit from the date of inclusion of the name of the petitioner in

the Select List. Prior approval of the appropriate government and existence of vacancies in the promotion quota are not conditions precedence to the appointment by the appropriate government in a cadre post nor the period of continuous officiation is affected by over utilisation of the deputation reserve quota.

Where a person other than a cadre officer is appointed to the Service by promotion in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, the year of allotment of the juniormost amongst the officers recruited to the Service in accordance with Rule 7 of the Rules who officiated continuously in a senior post from a date earlier than the commencement of such officiation by the former, is the determinative factor in allocation of the 'year of allotment' under rule 3(3)(b) of the Seniority Rules. Proviso thereto enjoins that the year of allotment of an officer appointed to the Service in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service in accordance with Rule 7 so started officiating, shall be determined ad hoc by the Central Government in consultation with it. Rule 3(3)(b) interdicts that in respect of an officer appointed to the Service by promotion in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for purposes of determination of his seniority, count only from the date of inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later. Explanation provides that an officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from the date of his confirmation in the senior post he continued to hold without any break or reversion the senior post otherwise than as a purely temporary or local arrangement. In these cases, the respondents who were appointed to the Service by promotion in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules were entitled under Explanation I to have the entire period of continuous officiation in a senior post, for the purpose of determination of their seniority, counted from the date of

Central Government by order dated October 1, 1976 accorded its approval to their appointment in the Indian Administrative Service. Furthermore, the respondents as non-cadre officer could not be denied the benefit of continuous officiation in a senior post merely because the State Deputation Reserve Quota was over-utilised: *Harjeet Singh v. Union of India and Amrik Singh v. Union of India.*"

16. In the circumstances, the petitioner in OA 2453/93 as well is entitled to count his officiating appointment from the date of inclusion of the name of the officers in the Select List for the purpose of consideration and his seniority and the year of allotment. The crucial date in the case of the petitioner in this OA is 6.3.1985, the date on which his name was brought in the Select List.

17. In the circumstances the respondents are directed to treat the officiating period of appointment of both the petitioners in OA No. 2453/93 and 882/94 in the cadre post/senior post from the date of the inclusion of the name of the petitioners in the Select List for the purpose of fixation of his seniority as well, the year of allotment. The respondent shall complete this process within four weeks from the receipt of a copy of this order.

18. O.A. is allowed to the extent stated above and no order as to costs.

1. S. P. Biswas
Member (A)

2. Dr. Jose P. Verghese
Vice Chairman (J)

3. K. S. M. J.
Co/C/J
8/10/91