

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1766 of 1994

Dated New Delhi, this 18th day of January, 1995

Hon'ble Shri J. P. Sharma, Member (J)
Hon'ble Shri B. K. Singh, Member (A)

Shri Swatantra Kumar Alok
C/o Shri J. C. Jetli
Advocate, Sidhartha Enclave, Flat No. 181
NEW DELHI-110014 ... Applicant

By Advocate: Shri J. C. Jetli

Versus

1. Union of India through
Secretary to the Government of India
Department of Personnel and Training
Ministry of Personnel,
Public Grievances and Pensions
North Block
NEW DELHI
2. Government of Himachal Pradesh
through Chief Secretary
Government of Himachal Pradesh
SIMLA ... Respondents

By Advocate: Shri V. S. R. Krishna

JUDGEMENT

Shri B. K. Singh, M(A)

This application under Section 19 of the Administrative Tribunal Act, 1985 has been filed by the applicant against orders: (1) No. 5/1/89-FA(UN) dated 14th June, 1994 issued by Shri J. M. Pathak, Director, Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, New Delhi, and (2) No. F-81/10/91-FA(UN) dated June 20, 1991 issued by Establishment Officer, and Additional Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training) New Delhi.

2. The brief facts are that the applicant is a regular recruit of the Indian Administrative Service and joined IAS on 5th July, 1965 and was allotted to IAS to cadre of Punjab and subsequently he was allotted the Himachal Pradesh cadre after Himachal Pradesh separated from Punjab as a result of re-organisation of States. He was working as a Lecturer in English in a Government College in Punjab with effect from 18.8.62. He worked as Lecturer from 18.8.62 to 1.7.65.

3. The applicant is currently on deputation on foreign service as Country Director of United Nations Population Fund(UNEPF) at Dhaka, Bangladesh. He went on deputation with effect from 5th March, 1990 for a period of two years initially vide order No.3/3/67-DP-Applt Vol III, Government of Himachal Pradesh, Department of Personnel dated 26th December, 1989. The period of deputation of the applicant was further extended by another three years vide order No.3/3/67-DP-Applt Vol III, Government of Himachal Pradesh, Department of Personnel dated 30th May, 1991. The present term of deputation of the applicant has been extended upto 5th March, 1995.

4. As per the consolidated instructions relating to foreign assignment of Indian experts vide letter No.F-18/10/91-FA(UN), Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 20th June, 1991, there is a ceiling on duration of assignment which stipulates as follows:

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"9. Ceiling on duration of assignment:

An officer may be permitted to remain on long-term assignments adding upto the maximum of five years during the first twenty five years of his service. Beyond 25 years of service, there could be no ceiling."

Under this paragraph, the applicant applied on 29th January, 1994 to the Government of Himachal Pradesh for an extension of his deputation till 31st December, 1998 on the plea that he had completed 25 years of service when he proceeded on deputation. The Government of Himachal Pradesh vide their letter No.3-3/6/DP/Applt Vol III dated 19th March, 1994 recommended the case of the applicant to Government of India. This request as contained in the aforesaid letter is as follows:

"3. The Government of Himachal Pradesh has no objection in sparing Shri S. K. Alok for continuing on transfer on foreign service to UNFPA till 31.12.1998 as requested by him. Since the officer has completed more than 25 years of service at the time of his initial deputation itself no ceiling on foreign assignment as such is attracted in this case in terms of para-9 of the Government letter quoted above.

4. It is requested that necessary Cadre clearance in favour of Shri S. K. Alok, I.A.S. (H.P. 65) to continue on foreign service to UNFPA may kindly be conveyed to this State Government at the earliest."

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5. The Government of India turned down this request on the ground that the applicant had not completed 25 years of service on 5th March, 1990, the date on which he proceeded on deputation on foreign service to UNFPA. The Government of India stated that the applicant completed 25 years of service on 4th July, 1990 since he joined IAS on 5th July, 1965. The Government of India further indicated that in terms of paragraph-9 of the consolidated instructions on foreign assignment the applicant has to undergo the required cooling off period for two years at the end of his present term on 5.3.1995 and only thereafter he will be exempted from the ceiling prescribed for such assignment. These orders were communicated to the applicant on 26th April, 1994 through office of Resident Commissioner, Government of Himachal Pradesh, New Delhi.

Aggrieved by the rejection of his request and also aggrieved by the consolidated instructions contained in paragraph-9, the applicant filed this O.A. on 1st September, 1994.

6. Reliefs prayed for in this application are as follows:

"1. A direction may be given to Union of India to allow Applicant to remain on transfer on foreign service to UNFPA till 31.12.1998 and the Union of India be also directed to convey cadre clearance to Government of Himachal Pradesh for this purpose. This relief is sought on the following grounds:

(i) Under para 9 of the consolidated instructions relating Foreign Assignment of Indian Experts, (Annexure II) "an officer is permitted to remain on long-term assignments five years during the first twenty five years of his service.

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Beyond 25 years of service there would be no ceiling." The Applicant joined service under the Government of Punjab on 18th August, 1962 and later joined I.A.S. on 5th July, 1965. Thus the applicant had completed more than 27 years of service under the government, state and Central, when he proceeded on 5th March, 1990 on deputation to foreign assignment with UNFPA.

(ii) The Government of India's decision as communicated in Annexure-I refusing cadre clearance for extension of the period of deputation of the Applicant from 5.3.95 to 31.12.98 by excluding his service of more than 2 years under Punjab Government is arbitrary, irrational and violative of articles 14 and 16 of the Constitution of India.

(iii) Dividing Indian Experts deputed for foreign assignment in two categories under circular letter No.F 18/10/91/FA (UN) dated 20th June, 1991 issued by the Government of India and prescribing a ceiling of five years for officers during the first twenty five years of his service and no ceiling beyond 25 years is irrational discriminatory and arbitrary and is also violative of Article 14 and 16 of the Constitution of India..."

7. A notice was issued to the respondents who contested the application and grant of reliefs prayed for. Shri J. C. Jetli argued the case on behalf of the applicant and Shri V. S. R. Krishna for also respondents. A written reply has been submitted by both the counsel representing the applicant and the respondents.

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8. The word 'service' is a wide word and carries with it varying connotations. In the present context 'service' means the service to which an officer belongs at the time of applying for an assignment. He belongs to the Indian Administrative Service and as a member of the I.A.S. Cadre he was considered for a foreign assignment. The All India Service Rules, 1954 (1&2) do not permit counting of service rendered in any other service for the purposes of seniority. The relevant rule which regulates the seniority is contained in IAS(Seniority)Rules,1954 and a careful reading of the word 'service' means the Indian Administrative Service. The other service rendered elsewhere has no relevance for determining the seniority of a regular recruit of the IAS. In case of promotee officers, they get the benefit of their past service and those who are picked up as exceptionally meritorious from other services of the State are assigned seniority on the basis of the length of service put in by them in their own cadres, viz. Engineering, Agriculture, Animal Husbandry etc. if they are inducted in the IAS when the Board meets to consider the cases of Deputy Collectors. On the basis of their outstanding performance they also get the benefit of past service rendered under the State Government as in the case of Deputy Collectors and some of them who are really outstanding and exceptionally meritorious get the

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advantage of superseding their seniors by being placed above those who are only very good or very good plus good.

9. The connotation of the word 'service' thus even in case of promotee officers and in case of induction of other service officers to the tune of 15 per cent within the quota of $33\frac{1}{3}\%$ promotee quota have their own regulations for determining their seniority. They find a berth in the promotee quota, but they get the benefit of seniority for their exceptional merit and their past service in the State Government and are assigned higher places in the promotion quota are placed above Deputy Collectors. As regards regular recruits of the IAS, the service rendered with State Government or Central Government is taken into consideration for purposes of qualifying service only if it is falling short of 33 years at the time of his superannuation or when he is taking voluntary retirement. This is meant to give him benefit for drawing higher pension and gratuity and for no other purpose. This past service may be added to the qualifying service for purposes of pension and gratuity only.

10. The rules governing seniority of Direct Recruits of the IAS have been changing over a period of time. When the war service recruits came in 1947-48, many of them were given seniority with effect from 1941 and many of the Deputy Collectors also got the benefit of seniority from 1941 when IAS itself was not in existence and the last examination of the Indian Civil service was

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conducted in 1943. This benefit of seniority was conferred notwithstanding the fact that I.C.S. officers were still serving the states and Central Government.

This preferential treatment was given to war recruits

with seniority fixed from 1941. To cite an example,

Shri P. K. J. Menon who was a Major in the Army, got the benefit from 1941; Shri J. S. Bali got it from 1943;

Shri S. N. Singh got the benefit from 1941 although he had been a Deputy Collector. This preferential

treatment was given to these officers on the basis of the classification based on an intelligible criterion of having volunteered to serve army during the Second World War.

11 The other group so classified consists of Short Service Commissioned Officers who volunteered to serve army when the country was facing the Chinese Aggression and the similar benefit was granted to those officers who volunteered to serve army in 1965 and 1971 Indo-Pak wars because they risked their lives in defending the nation. The classification is based on an intelligible criterion. The number of years they put in the army risking their lives during the Chinese Aggression/Indo-Pak Wars was counted for addition to their services if they made it to IAS appearing only in three papers i.e., General Knowledge, General English and Essay and these Short Service Commissioned Officers who were demobilised got this benefit. An officer receiving training with 1973 Batch was given seniority with effect from 1968 since he had put in five years of

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regular service in the army before being demobilised.

This is the case of Shri R. S. Tiwari in Bihar cadre.

There are two more officers who got five years seniority after they made it to IAS and these are S/Shri Dutta and Mishra in the Bihar cadre and similar benefits were conferred on all such officers serving other State Governments/Centre. These groups form a separate class for preferential treatment. No such preferential treatment can be given in seniority to regular recruits. They will become the members of the cadre from the date they join the service. To cite another example, Shri Prabhakar Menon, Joint Secretary in P.M.O. of 1967 Batch got into IAS with 40th position in the merit list in 1966. But he wanted to join Indian Foreign Service. He did not join IAS and appeared again and got in 1967 with 24th position and got into Indian Foreign Service because in those days first ten to fifteen in the ^{list of} first thirty candidates alone were selected for Indian Foreign Service. These examples have been cited only to show that unless there is a separate class and Government of India classifies them as such on account of risks involved to their lives for which they get the preferential treatment.

No preferential treatment of seniority can be conferred on regular recruits of the IAS cadre. The seniority rule today for all services is that if you do not join a particular service offered to you and you may be No.1

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in any of these Central Services and want to advance your career prospects by appearing for IAS/Indian Foreign Service, you will be treated an exempted probationer and notwithstanding your seniority in the previous batch if you do not make it to IAS/IFS you will be placed at the bottom of your batch as an exempted probationer though you will be a member of the cadre of that batch, but with the last position in that batch. This merit list becomes irrelevant in such cases and seniority though reckoned from the same year, but the exempted officer will be at the bottom of his batch notwithstanding his position in the merit list in the previous year.

12. The seniority is not based on the original merit list published by the UPSC when the results are declared, but it undergoes lot of change on account of the examinations conducted at the end of the institutional training and on the basis of the assessment made by the Director. The aggregate of the marks obtained in the original examination by UPSC are added to the marks obtained by the various probationers in the departmental examinations and in the assessment made by the Director and then the final seniority list in case of regular recruits is drawn up and many a times the No.1 becomes No.5 or may even go down further. These are the hassles of joining IAS as a regular recruit.

13. In the consolidated instructions paragraph-9 is relevant which lays down the cut off date for counting of service in the IAS cadre for regular recruits. One becomes a member of the cadre from the date he joins that service and seniority has to be reckoned from that date and this is exactly what the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) has done vide the impugned order. The applicant joined the Punjab Cadre of IAS on 5th July, 1965 and thus he would complete 25 years of service on 4th July, 1965 and therefore computation of the 25 years period as per rules is in order.

14. In a recent judgement by the Hon'ble Supreme Court in the case of Ram Janam Singh Vs State of U.P. in C.A. No. 354/94 from the judgement and order of Allahabad High Court in W.P. No. 7409/86 with C.A. No. 355-59/94 State of U.P. & Anr Vs Rajendra Malhan & Ors decided by the Hon'ble Supreme Court on 25.1.94, it has been categorically laid down ^{that} the date of entry in a cadre is the safest criterion for fixing the seniority. Any departure from this criterion by granting notional seniority from a back date must be based on objective considerations and on a valid classification. Such preferential treatment should be given on the basis of the statutory rules or administrative instructions supplementing these rules failing which it will affect

the seniority of those who have become members of a cadre earlier and will also attract Article 14 & 16 of the Constitution. If we add the past service for the purposes of seniority of the applicant, it will bring in serious distortions in cadre management at the State/Central level. The entire seniority determined on the basis of the aggregate of the marks obtained by various candidates in the Civil Services Examination coupled with departmental examinations and personality assessment will become topsy-turvy. The IAS(Seniority) Rules do not permit the counting of past service in case of regular recruits for purposes of seniority. This can utmost count if the qualifying service falls short of 33 years qualifying service for pension/gratuity. There is no rule or instruction for counting this for fixation of seniority as per AIS Rules,1954.

15. Rule 6(2)(ii) of IAS(Cadre)Rules,1954 regulates the deputation of IAS officers on foreign service. There is no vested right for deputation on foreign service. Government may or may not depute an officer on foreign service in public interest. Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) who have issued the statutory rules are fully competent to issue the consolidated instructions just to fill in the gaps where there are no statutory rules to regulate deputation because if there were statutory rules other officers will claim deputation as a matter of right and

that is the reason why there are no rules regarding deputation. These are governed by consolidated instructions issued by the Department of Personnel and Training. They are fully competent to issue administrative instructions to determine the eligibility conditions for deputation of an officer on foreign assignment. These administrative instructions contained in the consolidated instructions acquire the statutory force as has been held by the Hon'ble Supreme Court in the case of K. K. Bevinkutty & Anr as Appellant Vs Karnataka Public Service Commission as Respondents (AIR 1990 SC 1233). It says that a Government order issued in exercise of statutory provisions acquires statutory force. The seniority rules of IAS have been made under proviso to Article 309 and these consolidated instructions issued by Department of Personnel and Training are only for residuary purposes like deputation etc. where there are no rules. Thus these instructions supplement the rules as per judgement cited above and have the force of a statute. These instructions are applicable to members of IAS uniformly and as such there is no discrimination and Article 14 & 16 of the Constitution are not attracted. In another judgement of the Hon'ble Supreme Court AIR 1990 SC 535 in the case of Rangaswamy as Appellant Vs Government of A.P. as Respondents it has been held that it is none of the business of the courts to scrutinize the eligibility qualifications

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issued by Government for various purposes. Relevancy and suitability of the instructions or qualifications are not for courts to determine. If a person has a grievance, he should approach the appropriate authority for a review of such eligibility qualifications if it is hurting him. Courts must refrain from assessing relevancy of these instructions unless they are ultra vires or unreasonable or in conflict with any Article of the Constitution.

16. Rule of construction is very clear. Where the rules and instructions which supplement the rules are clear and unambiguous we have to interpret them on the basis of the language of the statute and should not import any other meaning into it. The seniority rules of 1954 in case of regular recruits and administrative instructions issued to supplement these rules are crystal clear and they have to be interpreted in the form they exist without any external aids. The orders issued by the Department of Personnel and Training and consolidated instructions are both in order so far as regular recruits are concerned and do not call for any judicial interference. The regular recruits form a separate class and are governed by their own rules on seniority and their period of computation of 25 years will be reckoned from the date they become the members of that cadre. The valid cut off date also in case of regular recruits has been decided by the Hon'ble Supreme Court in case of Sudhir Kr. Jaiswal Vs UOI (JT 1994(3) p.547 and Amitabh Bhatnagar where the Hon'ble

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Supreme Court has quashed the orders of Allahabad High Court and the Judgement and order of the CAT Bench of Lucknow and held that when a cut off date is prescribed unless it is very much wide of the it has a sanctity and it has to be adhered to. The mark. appointment of the two applicants, Shri Jaiswal and Bhatnagar have been cancelled and they have been directed to refund the amount which they had drawn because they were not eligible to take the examination having crossed the age of 30 years before 1.8.93.

17. In view of foregoing analysis, this O.A. fails and is dismissed in limni at the admission stage itself without any order as to costs. The M.A.4046/94 is also disposed of.

(B. K. Singh)
Member(A)

(J. P. Sharma)
Member(J)

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