

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO: 1124/2000

New Delhi, this the 23rd day of October, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

P.M. Rangasami,
Additional Adviser (FR)
Planning Commission
Yojana Bhawan, New Delhi-110001

..... Applicant
(Applicant in person)

Versus

Union of India :

1. through its Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhawan, New Delhi-1
2. Union of India
through its Secretary,
Department of Economic Affairs,
Ministry of Finance,
North Block, New Delhi-1
3. Union of India
through its Secretary
Department of Personnel and Training
North Block, New Delhi-1
4. Shri S.M. Jharwal,
Adviser,
Ministry of Communications,
Sanchar Bhawan,
Ashoka Road, New Delhi-1
5. Shri P.V. Thomas,
Adviser,
Ministry of Rural Development
Krishi Bhawan, New Delhi - 1

.... Respondents
(By Advocate : Shri R.N. Sinha proxy counsel for
Shri R.V. Sinha)

O R D E R

BY HON'BLE MR. S.A.T. RIZVI, MEMBER (A) :

The applicant in the present OA who joined the Indian Economic Service (IES) on 8.7.1970 in the pay grade of Rs.400-900 (pre-third CPC) stood at serial No. 2/

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294 in the seniority list issued by the respondent-authority in respect of grade IV of the IES on 8.5.1986 (Annexure A-4). He was promoted as Deputy Director (Grade-III of the IES) w.e.f. 7.3.1977 in the pay grade of Rs.1100-1600/- (3rd CPC). He was further promoted as Joint Director/Deputy Adviser (Grade-I of the IES) w.e.f. 26.2.1987 in the pay grade of Rs. 3700-4500/- (IVth CPC which also merged grade-II and grade-I of the IES into grade-I). With effect from 19.2.1991 he was promoted in the non-functional Selection Grade (NFSG) of Director in the pay grade of Rs.4500-5700/- (IVth CPC). In the integrated seniority list issued by the respondent-authority in respect of IES officers on 12.8.1994 (A-5), the applicant stood at serial No.37. He was further promoted as Addl. Adviser (Sr. Administrative Grade) in the pay grade of Rs.18400-22000/- (Vth CPC) w.e.f. 7.3.1997. A copy of the relevant order dated 7.3.1997 supplied in the Court has been taken on record.

2. One Shri A.K. Belwal had entered grade-IV of the IES w.e.f. 29.6.1971 nearly one year after the applicant's entry in that grade. Accordingly, Shri Belwal figured at serial No. 276 in the integrated seniority list dated 12.8.1994 (A-5).

3. The aforesaid Shri Belwal filed OA No. 1288 of 1993 challenging the seniority position of certain reserved category employees. The same was taken up for passing a common order by this Tribunal along with OA No. 1206 of 1993 filed by S/Shri Nagesh Singh and B.

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Bhandari. By a common order passed on 7.1.1999, the Tribunal allowed the aforesaid OAs to the extent that following the Supreme Court's judgement in Union of India vs. T.R. Mohanty (1994) 27 ATC 892 the promotion of the SC/ST officers made under Rule 13 (unamended) of the IES Rules, 1961 without considering the claims of the applicants in the aforesaid two OAs was held to be legally unsustainable. Following the same judgement of the Supreme Court, the retrospective operation of the amendment to Rule 13 of the IES Rules, 1961 made by Notification dated 22.9.1989 to the extent that the same took away the vested rights of the applicants and the other general category candidates was also struck down as not reasonable, arbitrary and as such violative of Articles 14 and 16 of the Constitution. After holding as above, the Tribunal by the same order dated 7.1.1999 further proceeded to lay down as under:

"In the light of the above, respondents are directed to review the impugned promotions and consider the cases of the applicants for promotion from the date the impugned promotions were made, with all consequential benefits. While doing so the Respondents should make all efforts to protect the promotions of reserved category candidates to the extent possible, but if it becomes absolutely necessary to revert them from the higher posts to which they have been promoted under the unamended or amended Rules, that may be done. While doing so, however, any financial benefits given to them while working in the higher posts should not be withdrawn and should be protected as personal to them."

4. The matter was thereupon taken to the High Court of Delhi which on 29.1.1999 directed that "in the meanwhile there shall be no reversions in pursuance of

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the impugned order of the Tribunal". Subsequently, on 24.11.1999 the same High Court modified its aforesaid direction to read "interim order passed on 29.1.1999 is modified to the extent that the UOI shall carry out the promotions of the respondents in accordance with the Tribunal's order. In case, if the Union of India is required to seek any clarification in respect of reversion of the petitioners, the UOI is at liberty to approach this Court."

5. In compliance of the aforesaid order dated 7.1.1999 passed by this Tribunal and the above mentioned orders made by the Delhi High Court, the respondent-authority proceeded to issue Office Memorandums (OMs) dated 17.12.1999, 22.2.2000 and 6.6.2000 (Annexures A-1, A-2 and A-3). It will be seen that the respondent-authority has accordingly reviewed all the promotions made in the past from grade-IV to grade-III of the IES by providing reservations to the SCs and STs under the unamended/amended Rule 13 of the IES Rules, 1961. As a result of the said review, the dates of promotions to grade-III have undergone changes. Insofar as the applicant is concerned, as a result of the aforesaid review, the revised date of his promotion to grade-III has been treated as 18.3.1983 against the earlier date of 7.3.1977 (serial No.185 of Annexure A-1) He has thus lost six years in grade-III of the IES (Annexure A-1). For the same reason, the revised date of his promotion to grade-I of the IES is treated as 12.5.1988 instead of 26.2.1987 (serial No.109 of Annexure A-2). Following the same reasoning in the

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NFSG, the revised date of his promotion is treated as 1.7.1992 instead of 19.2.1991 (serial No.69 of Annexure A-3). Insofar as Sr. Administrative Grade (SAG) is concerned, by respondents' order dated 21.8.2001 (copy supplied in the court and taken on record), the revised date of applicant's promotion to SAG has been treated as 21.6.2001 in place of 7.3.1997.

6. The respondent-authority's order dated 7.3.1997 aforesaid was conditionally passed and was subjected to the outcome of the OA Nos.1288/1993 and 1206/1993 filed respectively by Shri A.K. Belwal and S/Shri Nagesh Singh and B. Bhandari. Their order dated 21.8.2001 aforesaid which has been issued by way of implementation of this Tribunal's aforesaid order dated 7.1.1999 passed in OA Nos.1206/1993 and 1288/1993 has been made subject to the final outcome of the CWP No.508 of 1999 - M. Ganesan & Others vs. UOI, CWP No. 888/1999 - B.D. Virdi & Others Vs UOI, CWP No.223/2001 - V. Velayudhan & Anr. Vs UOI pending in Delhi High Court and the present OA No.1124/2000.

7. The changes made in the dates of promotions of the applicant to various ranks/posts in the IES as above are a source of grievance insofar as the applicant is concerned. Hence the present OA. The plea advanced by the applicant is that he has been made to lose seniority in grade-III of the IES and also in subsequent higher posts for no fault of his. He has never been made a party in any of the OAs filed in the Central Administrative Tribunal to which references have been

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made in the preceding paragraphs. He was also not a party in the Contempt Petition, being CP No.266 of 1999 filed in OA No.1288 of 1993. In the MA No.2795 of 1997 filed in OA No.1288 of 1993 also he was not made a party even though the applicant in that OA as also the applicants in OA No.1206/1993 were required by the Tribunal itself to implead all the persons concerned. The applicant has submitted that in the aforesaid Writ Petitions Nos. 508/1999 and 888/1999 filed in the Delhi High Court also the applicant is not a party. Thus, the applicant is simply not in the picture insofar as the aforesaid litigation prosecuted in the Tribunal and in the Delhi High Court is concerned. No show cause notice has been served on him either at any stage to enable him to state his case before altering the dates on which he has been promoted to grade-III and subsequently to the higher posts. The representation dated 27.3.2000 (Annexure A-8) filed by him after OMs dated 17.12.1999 and 22.2.2000 had been issued has not succeeded in eliciting any response whatsoever from the respondent-authority.

8. We have considered the rival contentions raised by the parties and have perused the material placed on record. We have also perused the copies of orders supplied in the Court already referred to above.

9. The learned counsel appearing on behalf of the respondents has submitted that the respondents have merely complied with the orders passed by this Tribunal on 7.1.1999 and the High Court of Delhi on 29.1.1999 and

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24.11.1999 and, therefore, no fault can be found with the same. The impugned OMs placed at Annexures A-1, A-2 and A-3 are, therefore, in order. Similarly, the respondents' order dated 21.8.2001 is also covered by the same orders passed by the Tribunal and the High Court of Delhi. He has also submitted that since the Tribunal's orders dated 7.1.1999 are, in turn, based on the Supreme Court's judgement in UOI & Others vs. T.R. Mohanty and Others (supra), the legality and the constitutional propriety of the same cannot be questioned. According to him, the applicant has not exhausted the departmental remedies available to him ~~as in -~~ ~~as~~ as-much as the representation dated 27.3.2000 (A-8) filed by the applicant cannot be said to have been made for the redressal of his individual grievance and as such cannot be entertained. Furthermore, since the present OA has been filed before the respondent-authority issued orders dated 21.8.2001, the same cannot be challenged in the present OA.

10. We have considered the matter carefully and find that there is no substance in the learned counsel for the respondents' argument that the applicant has not exhausted the departmental remedies available to him. The representation dated 27.3.2000 though, ^{to be} prima-facie appears in the nature of a general representation, is, on a close reading, found to be aimed at redressing the individual grievance of the applicant. The applicant has, during the course of arguments as well as in the written pleadings on record, emphatically pleaded that he was never made a party to any of the proceedings

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launched by the various applicants in the Tribunal or in the High Court. This is despite the fact that this Tribunal itself had during the course of hearing in OA Nos. 1288/1999 and 1206/1999 required the applicants therein to implead all the necessary parties. The list of officers of IES impleaded in the aforesaid OAs is, according to the applicant, also a part of the order passed on 7.1.1999. ~~That~~ That no show cause notice has been served on the applicant before affecting changes in the dates of his promotions to various grades has not been ~~disputed~~ ^{disputed} by the respondents. Another contention raised by the applicant in his aforesaid representation is that since he happens to be senior to the various applicants in the aforesaid OAs at the point of entry to service in grade IV of the IES, there could be no question of the said applicants before this Tribunal challenging the promotions or the seniority given to the applicant in various grades. Having regard to the aforesaid position, we find no difficulty in holding that the aforesaid representation dated 27.3.2000 filed by the applicant was a proper representation and, therefore, the respondents were under an obligation to consider the same and come out with a speaking and a reasoned response thereto within a reasonable time. The fact that the present OA has been filed before the respondents passed the latest order dated 21.8.2001 by which the date of applicant's promotion to SAG has been changed from 7.3.1997 to 21.6.2001 ~~will not make any difference to the aforesaid position.~~ ² ³ will not make any difference to the aforesaid position. This is so for the reason that a considered and a reasonable response to the aforesaid representation dated

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27.3.2000 would, by necessary implication, ~~is~~ have disposed of the aforesaid order dated 21.8.2001 as well. Furthermore, the default committed by the respondent-authority in not serving a show cause notice on the applicant as above also stands out, notwithstanding the averments made on behalf of the respondents that whatever has been done by them by way of issuance of the impugned OMs has been done in compliance of the orders passed by this Tribunal on 7.1.1999. Audi alteram partem is the cardinal principle of natural justice. The same has not been ~~properly observed~~ by the respondent-authority by not issuing any show cause notice to the applicant and further by not considering the representation filed by him, thus committing a serious breach of the aforesaid principle of natural justice. In this view of the matter the OA succeeds in part and is disposed of with the following directions to the respondent-authority:-

(i) A careful reading of the various OMs issued by the respondent-authority placed at Annexures A-1, A-2 and A-3 shows that the said authority has by issuing the said Memorandums carried out changes in the dates of promotions of the applicant as well as ^{of} others in various grades starting grade-III of the IES. The revised dates of promotions to the various grades have been shown in the aforesaid Memorandums. The respondent-authdority's order dated 21.8.2001 similarly seeks to make changes in the dates of promotion of the applicant and others to SAG.

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The lists attached to the aforesaid Memorandums do not purport to be seniority lists. Furthermore, the respondent-authority's order dated 21.8.2001 is subject to the final outcome of certain Writ Petitions filed in the High Court of Delhi as well as the present OA. In the circumstances, the seniority position of the applicant in the present OA remains un-affected, even though the dates of his promotions to various grades starting grade-III of the IES have been revised. The applicant is, therefore, entitled to be considered for retention in the SAG as also for promotion to still higher ranks in accordance with his original seniority. The respondents will consider applicant's claim accordingly.

(ii) Based on the revised dates of promotions to various grades starting grade-III of the IES notified by the respondent-authority by issuing the aforesaid OMs at Annexures A-1, A-2 and A-3 and the order dated 21.8.2001, the respondent-authority will proceed to reformulate the seniority lists in respect of various grades and notify the same for inviting objections from the officers concerned. Final seniority lists will be issued in due course after considering representations, if any, received ^{of affected persons &} including the applicant in the present OA. The applicant in the present OA will be entitled to raise in his representation to be filed at the appropriate

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time such further pleas both legal and factual as become available to him in addition to the grounds taken by him in his representation dated 27.3.2001 (A-8).

(iii) Until final seniority lists are issued as above, the applicant's case for further promotion from the SAG will be considered in accordance with his original seniority which led to his promotion to the SAG w.e.f. 7.3.1997.

(iv) At the time of considering the representations, if any, filed by the officers including the applicant in the present OA as above, the respondent-authority will also take into account such other orders as are passed in the matter by the High Court of Delhi where, as already mentioned in the preceding paragraphs, certain petitions are currently pending.

(v) The Office Memorandums placed at Annexures A-1, A-2 and A-3 and the respondent-authority's order dated 21.8.2001 stand modified accordingly insofar as the present applicant is concerned.

11. The the present OA is disposed of in the aforesated terms. There shall be no order as to costs.

S.A.T. Rizvi
(S.A.T. RIZVI)
MEMBER (A)

Kuldeep Singh
(KULDIP SINGH)
MEMSBER (J)

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