

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(16)

PRINCIPAL BENCH, NEW DELHI.

O.A.No.2577/89

Date of decision: 08-10-1993

Sh. G. Ramachandran & Ors. Applicants

versus

Union of India & Ors. Respondents

Coram:-

The Hon'ble Sh. Justice S.K. Dhaon, Vice-Chairman

The Hon'ble Sh. B.N. Dhoundiyal, Member(A)

For the applicants : Sh. Gyan Prakash, counsel

For the respondents : None

JUDGEMENT

(delivered by Hon'ble Sh. B.N. Dhoundiyal, Member(A))

The three applicants before us Dr. G. Ramachandran, Sh. S. Natarajan and Sh. V. Vikraman are the retired Joint Directors of the Central Statistical Organisation, Department of Statistics, Govt. of India. They had earlier come in T.A.No.45/85 and in pursuance of this Tribunal's order dated 21.5.1987 they were given seniority in Grade-I of the Indian Statistical Service w.e.f. 23.6.1979. They have prayed that the respondents be directed to consider them for appointment to the non-functional Selection Grade of the Indian Statistical Service w.e.f. 23.6.1984 when they are deemed to have completed 5 years of service in Grade-I of the ISS and suitably modify the impugned order dated 7.6.1988. They

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have also sought a direction that they be given deemed promotion from the date their juniors were promoted to posts higher than Grade-I of ISS alongwith consequential benefits.

The applicants have stated that Rule 5 of the Indian Statistical Service Rule provides for non-functional Selection Grade in addition to Grades 1 to IV of the ISS. Rule 5 also provides for determination of the strength of the non-functional Selection Grade based on the strength of Grade-I and Grade-II of the service. Rule 8 of the ISS provides for eligibility conditions for appointment to the non-functional Selection Grade. All the vacancies in the Selection Grade have to be filled by appointment of Grade-I officers who have rendered not less than 5 years service in the grade and such appointments have to be made on the basis of merit with due regard to seniority. The second proviso to Rule 8 provides that the officers granted the Selection Grade may be allowed pay in the scale of pay attached to the Selection Grade whether they are holding a functional cadre post in that scale or holding a Grade-I post, subject to the condition that the total number of officers drawing pay in the scale of pay attached to the Selection Grade is within the strength of the Selection Grade fixed under sub-rule (3) of Rule 5. Their contention is that they were given notional promotion to Grade-I of ISS w.e.f. 23.6.1979. Thus, they have completed 5 years service of Grade-I officers from 23.6.1984 and were, therefore, eligible for appointment in the non-functional Selection Grade from 23.6.1984. In para 11 of the O.A. they have given a calculation whereby the number of Selection Grade posts to be treated as

non-functional Selection Grade was nine. They have cited cases of their colleagues who were given such grades, *by not* extending to them the benefit of non-functional Selection Grade for which they were eligible after 23.6.1984, the respondents have failed to fully comply with the directions of this Tribunal.

The respondents have contended that 13 posts in the Selection Grade and one post each in the Supertime Scale Level-II and Level I were encadered for the first time in the ISS vide Notification dated 27.12.1986. Rule 5(1) of ISS Rules provides that the ISS has posts in Grade-IV, III, II and I and in the Supertime Scale. The posts in above Grade-I level were encadered only on 27.12.1986 and till that date only Grades-IV, III, II and I were part of the ISS and consequently the directions of the Hon'ble Tribunal in TA No.45/85 for grant of subsequent promotions due etc. would be applicable only with reference to these grades. This requirement has been duly complied with through orders dated 7.6.1988. Rule 5(3) was an enabling provision to take care of the cases in which the senior officers who have been cleared for appointment to Statistical Functional Posts in the pre-revised of pay scale of Rs.2000-2250/2500 or Rs.2500 and above were not picked up for such posts while their juniors had been so appointed in out side the cadre. Such officers were provided non-functional Selection Grades. The following guidelines were prescribed:-

"(1) Only officers who had rendered 5 years service in Grade-I will be considered for appointment to the selection Grade. However, if any junior officer is eligible and is considered for appointment all his seniors will be deemed eligible;

(2) The appointments will be on the basis of merit. For this purpose the list approved by the Senior Selection Committee will be utilised, provided if any, officer is not eligible according to (1) above, his name whenever it is included in the list will be ignored;

(3) All the officers who are approved for appointment to higher posts and are already in functional posts in the scale of pay of the selection grade or higher and senior to an officer appointed to the Selection Grade shall be deemed to have been appointed to the Selection Grade and this will be made clear in the order of the appointment of the junior officer. The same will hold good of approved service officers of foreign assignment. It will be made clear that such officers are not being appointed only because they were already holding ex-cadre posts in the scale of Rs.2000-2250 or in the higher scales or are not available. If any of them ever return to the cadre and has to be appointed to the Grade-I, they will automatically be appointed to the Selection Grade even by reverting the junior most Selection Grade Officer if there is no vacancy in the Selection Grade."

In terms of these guidelines, Kumari S. Basu and Dr. M.S. Avadhani were appointed to officiate in the Selection Grade from 16.11.1982. The present applicants were junior to them. Sh. S. Ramanatha Iyer whose case is cited by the applicant was appointed Director, Field Division, NSSO on ad hoc basis with effect from 21.7.1983 and continued to be so till 27.12.1986 when this post was encadered in the Selection Grade of ISS and his appointment to the Selection Grade in ISS was made vide Notification dated 26.11.1987. Though some officers who by virtue of revision of seniority have become junior to the applicants were still holding post carrying statistical functions in the scale of Rs.2000-2250/2500 and that in the out side

cadre. The applicants could claim such appointments on this basis only from 27.12.1986 i.e. the date on which the posts in above Grade-I were encadered and cadre appointments made. In August, 1987 the Deptt. of Personnel & Training issued orders providing for non-functional Selection Grade in all central services equal to 15% of the total number of senior posts. In pursuance of this Notification, appointments were made to the non-functional Selection Grade w.e.f. 1.1.1986. Dr. G.Ramachandran had retired from government service on 13.9.1985 and was not in position from 1.1.1986. The other two applicants Sh. S. Natarajan and Sh. V. Vikraman were given non-functional Selection Grade w.e.f. 1.1.1986.

We have gone through the records of the case and heard the learned counsel for the parties. Rule 5(3) of the ISS Rules states that there shall be non-functional Selection Grade in the service. This Rule was operative in 1984 when the applicant had completed 5 years of deemed service in Grade-I of the ISS. The Rule clearly states that:-

"In addition to the functional grades mentioned in sub-rule (1), there shall be a non-functional selection grade in the service in the scale Rs.2000-125/2-2250 and the strength of such selection grade shall be fixed at 2% of the combined total strength of Grades-I and II as obtaining from time to time subject to the condition that it shall not exceed 50% of the total strength of Grade-I as obtaining at the relevant time. Provided that at any given time the aggregate of the number of officers in the non-functional Selection Grade in the service and the number of officers appointed to functional cadre posts in the same scale of pay as that of the non-functional Selection Grade shall not exceed the strength of the Selection Grade fixed under this sub-rule."

The Notification dated 27.12.1986 repealing these rules came into effect only on 27.12.1986. The respondents have admitted that officers who had by virtue of the revision of seniority, become junior to the applicants were holding posts carrying statistical functions in the scale of Rs.2000-2250/2500 outside the cadre on deputation basis in isolated posts under the General Central Service. However, they have contended that the posts above Grade-I were encumbered only from 27.12.1986. Non-functional Selection Grade was given to two of the applicants, namely, Sh. S. Natarajan and Sh. V. Vikraman w.e.f. 1.1.1986. No benefit was given to Dr. G. Ramachandran who retired from government service on 30.9.1985 and was not in position on 1.1.1986. The judgement of this Tribunal dated 21.5.1987 clearly indicated that all consequential benefits due to revision of seniority should be made available. This would mean that if the applicants were qualified and if Rule 5(3) provided for non-functional Selection Grade even prior to 1.1.1986, the applicants would have a right to be considered for this grade. In case of those who have since retired, such grant of functional grade would imply upward revision of their pensionary benefits also.

We, therefore, hold that the applicant are entitled to succeed and dispose of the application with the following directions:-

- (1) The respondents shall determine the vacancies available in the non-functional Selection Grade from 23.6.1984 onwards;
- (2) The cases of the applicants for promotion to the non-functional Selection Grade shall be considered and if found fit on merits, they shall

be deemed to have been promoted to this scale from the date their juniors were promoted/appointed to posts higher than of ISS;

- (3) All consequential benefits including higher pension, grade etc. shall be made available to them;
- (4) On the amount of arrears so calculated interest at the rate of 12% shall be payable from the due date till the date of actual payment;
- (5) These orders shall be complied with within a period of four months from the date of communication of this judgement.

There shall be no orders as to costs.

B.N. Dhondiyal
(B.N. Dhondiyal) 810783
Member(A)

S.K. Bhaon
(S.K. Bhaon)
Vice-Chairman

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