

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2066/88

New Delhi this the 16th Day of November, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Sushil Kumar, son of
Late Sh. Baalbir Dayal,
377 Hauz Khas SFS Apartments,
New Delhi-110016.Applicant

(Applicant in person)

Versus

Union of India through the
Secretary (R), Cabinet
Sectt., Govt. of India,
New Delhi.Respondent

(By Advocate Sh. V.S.R. Krishna)

ORDER (ORAL):

Hon'ble Mr. N.V. Krishnan:--

The applicant is aggrieved by the order dated 9.12.85 of the respondent -- the Secretary in the Cabinet Secretariat, Government of India, by which the seniority of the applicant in the Research and Analysis Wing (RAW for short) was changed to his detriment.

2. The brief facts giving rise to the application are as follows:--

2.1 The applicant started his service as a State Police Officer in Uttar Pradesh, he being a directly recruited Deputy Superintendent of Police. While so, he joined the Intelligence Bureau (IB) on the same rank on deputation on 15.1.63. He continued to be in the IB where he also gained promotion on deputation.

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2.2 On the creation of the RAW in September, 1978, the applicant's services were transferred from the IB to RAW.

2.3 The applicant was brought on the select list of the U.P. cadre of the Indian Police Service (IPS) in 1972 and, while he was still on deputation to the RAW, he was appointed to the IPS on 22.8.77 and was confirmed therein on 22.8.78. In terms of the Rules and Regulations applicable to the IPS, the year of allotment of the applicant in that service was ^{as later} determined as 1966.

2.4 The Research and Analysis Wing (Recruitment Cadre and Service) Rules, 1975 - Rules for short - were promulgated and became effective from 21.10.75. The applicant was informed by the letter dated 10.8.84 of the respondent that it was proposed to appoint him in the Research and Analysis Service (RAS) in the Cabinet Secretariat at the initial constitution of the service under the aforesaid rules, w.e.f. 1.10.83. He was described in this letter as an officer of the U.P. Police. It was indicated that on being so appointed, his year/notional year of allotment and seniority in the senior time scale would be as indicated in the provisional gradation list enclosed thereto. That provisional list indicated that his year of allotment would be 1961. The applicant was required to exercise his option to join the RAS. The applicant exercised the option and he was appointed to the RAS w.e.f. 1.10.83 vide letter dated 27.4.85 (Annexure IX).

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2.5 However, subsequently, the OM dated 9.12.85 at page 22 of the paperbook was issued to the applicant in which the facts of his appointment were recalled and it was stated that as he was appointed to the IPS, his year of allotment in the RAS would be governed by the provisions of Rule 23 (2)(a). Accordingly, his year of allotment in the RAS would provisionally be 1968 because State Police Service Officers senior to him in the U.P. cadre appointed to the IPS have been given the year of allotment as 1968 by the Ministry of Home Affairs. It was mentioned that the provisional year of allotment of 1968 in the RAS would be subject to the year of allotment in the IPS as finally determined by the Ministry of Home Affairs. The letter concluded as follows:-

"Under Rule 23(2)(a) of the R&AW (RC&S) Rules, 1975, in the case of officers belonging to the IPS, their year of allotment in the RAS will be the same as their year of allotment in their respective service immediately before their absorption in the service (RAS). Since immediately prior to the date of initial constitution of the RAS, i.e. 1.10.1983 Shri KUMAR was a confirmed officer of the IPS in the UP cadre, his year of allotment in the RAS has to be the same as in the IPS under the above rule.

4. Shri Sushil Kumar is hereby given an opportunity to make any representation regarding alteration of his provisional year of allotment to 1968 and to give a fresh option by 31.12.1985 to join the RAS with the said provisional year of allotment. If no communication is received from Shri Kumar by 31.12.1985, it will be presumed that Shri Kumar does not wish to join the RAS."

2.6 The applicant has not stated in the OA as to what reply he sent to the respondent with reference to the opportunity given to him by the letter dated 9.12.85. However, it is clear that the applicant still opted to join the RAS, because, if he had not so opted, para.4 of the OM dated 9.12.85 reproduced in para 2.5 states that it would be presumed that he did not want to join RAS.

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2.7 It is stated in para-7 of the OA relating to remedy exhausted that he submitted representations dated 30.3.86 and 18.8.86 to the Cabinet Secretary. A copy of the representation dated 30.3.86 was later on filed by him alongwith MP-4060/92. That representation is at page 30 of the paperbook (Annexure VIII). It refers to the correspondence resting with his earlier memo dated 8.1.86 on the subject of seniority. That memo of 8.1.86 has not been produced by the applicant.

2.8 Para-9 of the application regarding the reliefs is lengthy and argumentative and does not pinpoint the exact relief sought. However, it is clear that the applicant is aggrieved by the change of his seniority in RAS ~~to his (1961)~~ to his detriment (i.e. from 1961 to 1968) and seeks restoration of the 1961 seniority given to him.

2.9 Aggrieved by the change of his seniority in this manner, the applicant has prayed for a declaration that the retrospective change of seniority is violative of principles of law. He, therefore, seeks that the original seniority granted to him be restored.

3. The respondents did not file reply to the OA, despite having been given sufficient opportunities. The right to file the reply was forfeited on 6.9.89.

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4. The learned counsel for the respondents has not even brought the record of the case, which would have been helpful to us to determine these issues. In the circumstances, we proceed on the basis of the available record and arguments of the parties.

5. We are of the view that if the applicant was aggrieved by the change of seniority, which was communicated to him by the letter dated 9.12.85, it was open to him to revoke his option to join the RAS. In fact, if he did not exercise any option it would have been presumed that he did not want to be absorbed in RAS. He could then have demanded that he be sent back to his parent cadre i.e., the I.P.S. He has no case that he made such a demand.

6. The change of seniority that has been made by the letter dated 9.12.85 is neither arbitrary nor unreasonable. In the first instance, the respondents made a mistake by treating the applicant, in the OM dated 10.8.84, as an officer of the U.P. Police, as by that time, admittedly, he has already been made a member of the IPS in a substantive capacity. It is when this mistake was discovered that the applicant was informed that his seniority would be determined in RAW on the basis of Rule 23 (2)(a), which reads as follows:-

" 23. Determination of inter se seniority :

(1) The inter se seniority of the members of the Service in each grade shall be determined by fixing a year of allotment for each of them.

(2) The year of allotment will be determined as follows:

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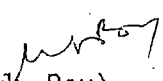
(3) In the case of officers belonging to the Indian Administrative Service, the Indian Police Service, the Indian Foreign Service and the Indian Frontier Administrative Service; their year of allotment in the Research and Analysis Service will be the same as their years of allotment in their respective Services immediately before their absorption in the Service.

Provided, that if by reason of their age they would not have been eligible to take the examination for the Indian Administrative Service or the Indian Foreign Service in the year immediately preceding their year of allotment, their year of allotment would be the year immediately following the earliest year in which they would have been eligible to take that examination."

cl. 6. The substantive provision of clause (a) of sub rule (2) of Rule 23 clearly applies to members of the Indian Administrative Service, Indian Police Service, Indian Foreign Service and the Indian Frontier Administrative Service and states clearly that the year of allotment will be the same as their year of allotment in their respective service, immediately before absorption. The proviso thereto is somewhat involved and we certainly have not been able to gather the import of the proviso. The learned counsel for the respondents also did not help us in this regard. However, it is clear that that proviso refers to a direct recruit, because it refers to the examination for the Indian Administrative Service or the Indian Foreign Service which applies only to direct recruits.

7. In the circumstances, we are satisfied that no injustice has been done to the applicant in so far as determination of seniority and his year of allotment in the RAW is concerned. If the applicant was dissatisfied, it was open to him to opt out ~~under law~~ and if that had not been permitted, he would have had a valid cause of action to be agitated before us.

8. The OM dated 9.12.85 changing his seniority is based on the rules and it cannot be assailed. In the circumstance, we find no merit in the O.A. It is dismissed. No costs.


(C.J. Roy)
Member(J)

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16.11.84
(N.V. Krishnan)
Vice-Chairman(A)