

O.A. No.1098 of 1988.

Date of decision 9.8.1990

Shri Rama Dhin

...Petitioner

Shri Gyan Prakash

...Advocate for the petitioner.

Versus

Union of India &amp; others

...Respondents

Shri P.P. Khurana

...Advocate for the respondents.

CORAM:

Hon'ble Mr. B.C. Mathur, Vice-Chairman(A)

Hon'ble Mr. S.R. Sagar, Member(J).

JUDGMENT BY : Hon'ble Mr. S. R. Sagar, Member(J).

It appears that the applicant was appointed and confirmed in the post of Senior Investigator in the Central Statistical Organisation, Department of Statistics and promoted on ad hoc basis to the post of Assistant Director in the same organisation and served on that post till 15.7.1980. As a result of his selection to the ex-cadre post of Senior Research Officer(SRO) in the Joint Intelligence Organisation, Ministry of Defence, through U.P.S.C., the applicant joined the said office on 16.7.1980. He was confirmed on the said post w.e.f.16.7.1982. Consequent on a decision to disband the Joint Intelligence Organisation in a phased manner, the applicant became surplus in June, 1985. Thereafter, the applicant was appointed as Senior Research Officer(SRO) on 12.6.1986 on deputation basis for a period of three years by the Intelligence Bureau, Ministry of Home Affairs. In September, 1986, the respondents issued draft seniority list of Grade III of Indian Statistical Service but the name of the applicant was not included in that list. The applicant has, therefore, filed this application before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, for the following relief(s):--

- " a) The impugned draft seniority list of Grade-III of Indian Statistical Service dated 5.9.86 may be amended to

include the name of the applicant at a suitable place based on his promotion orders at Grade III Officer of ISS issued by the Respondents on 22.5.1986.

b) The final seniority list of Grade-III Officers of I.S.S. should be notified including the name of the applicant.

c) The applicant should be given promotion in Junior Admn. Grade of the ISS since his juniors in the list of promoted officers in Grade-III of ISS have already been promoted vide respondents order dated 30th March, 1988.

d) Any other benefit which Hon'ble Central Administrative Tribunal may deem fit including cost to the applicant. "

2. Briefly stated, the applicant's case is that he was appointed as Senior Investigator in the Central Statistical Organisation, Department of Statistics on 13.1.1970 as direct recruit. He was confirmed in that post. He was promoted on ad hoc basis to the post of Assistant Director in the same organisation w.e.f.7.1.1977. This post is included in Grade IV of Indian Statistical Service(ISS). Thereafter, he was selected to the ex-cadre post of Senior Research Officer in the Joint Intelligence Organisation. He was confirmed and continued on that post till June, 1985 when as a result of a decision to disband the Joint Intelligence Organisation in a phased manner, he became surplus. The name of the applicant along with his bio-data was forwarded by the Ministry of Defence to the Department of Statistics and Department of Economic Affairs for absorption. Intelligence Bureau(IB), Ministry of Home Affairs circulated the post of Senior Research Officer(SRO) to different departments for filling up the same on transfer on deputation basis. The applicant also applied and in consultation with the UPSC

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he was selected and appointed as Senior Research Officer on 12.6.1986 on deputation basis for a period of three years. The Ministry of Defence gave an information of the said posting of the applicant to the Department of Statistics vide their O.M. dated 16.7.1986. The applicant has further stated that the respondents stated in their notification dated 8th May, 1986 that in compliance with the directions of the Hon'ble Supreme Court in its judgment dated 11th February, 1986 in the case of Narendra Chadha and others Vs. Union of India & Others, 264 officers were appointed to the post of Assistant Director and equivalent in the scale of pay of Rs.700-1300 in various Ministeries/ Departments/Offices to Grade IV of ISS with effect from the dates shown against each of them in supersession of all previous notifications for appointments to Grade IV of Indian Statistical Service (ISS) on probation basis and under rule 8(i)(ii) of ISS Rules, 1961, as amended from time to time. The name of the applicant appeared at serial no.246 with date of appointment shown as 7.1.1977. Subsequently, by another notification dated 22.5.1986, the respondents mentioned that the Hon'ble Supreme Court has interalia directed that a review of promotions made till 11.2.1986 from Grade IV of ISS to higher posts should be made in the light of the revised seniority list of Grade IV of ISS. Accordingly, a review had been made of the 176 promotions made from Grade IV to Grade III of ISS and all those promotions were made accordingly. The name of the applicant appeared at serial no.74 with date of promotion to Grade III as 6.1.1981. Vide the O.M. dated 27.6.1986 showing posting of Grade III officers of ISS in Grade III/ equivalent vacancy was issued and the name of the applicant

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appeared at serial no.29 of Annexure-I of the list. That Annexure gives names of 67 officers promoted to Grade III of ISS vide the notification dated 22.5.1986 who were then holding Grade III or equivalent or higher posts in ISS/IES or other equivalent or ex-cadre/deputation/foreign service posts. These officers were to continue on their present posts until further orders. The Ministry of Defence in this respect issued a letter to the respondents informing that the applicant had been appointed as SRO in Intelligence Bureau on deputation basis and requested them to endorse a copy to the Intelligence Bureau. Vide their O.M. dated 5.9.86, the respondents issued draft seniority list of Grade III of ISS. This list did not include the name of the applicant. The applicant made a representation for inclusion of his name in the seniority list of Grade III of ISS with <sup>Pr</sup>no fruitful results. The applicant has further stated that after issue of the said draft seniority list, promotions of officers from Grade III of ISS to Junior Administrative Grade of ISS were made. Even officers junior to the applicant in Grade III, namely, S/Shri S.K. Bhanot, R.N. Mondal and R.S.D. Batra have been promoted to the Junior Administrative Grade in violation of Articles <sup>Pr</sup>14 and 16 of the Constitution of India. The applicant has, therefore, prayed for the relief(s) extracted above.

3. It is admitted <sup>Pr</sup>by the respondents that the applicant was appointed as Senior Investigator on 13.1.1970, was confirmed in that post; and was appointed as Assistant Director on a-d hoc basis on 7.1.1977 and continued in that capacity till 15.7.1980 in ISS. Subsequently, the applicant was selected by the UPSC for appointment, as a direct recruit, as Senior Research Officer in the

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Joint Intelligence Organisation of the Ministry of Defence. He joined this post on 16.7.1980 and was confirmed in that post on 16.7.1982. It has been contended by the respondents that consequent on his confirmation, the lien in the post of Senior Investigator in the CSO was terminated w.e.f.16.7.1982.

The respondents have further contended ~~that that~~ pursuant to the directions of the Supreme Court in the Narender Chadda's case aforesaid, the applicant was appointed to Grade IV w.e.f.7.1.1977 and was also considered for promotion to Grade III of ISS, while reviewing the promotions made earlier from Grade IV on the basis of revised seniority list and he was promoted to Grade III of ISS w.e.f.8.1.1981. The Department of Statistics circulated the seniority list in Grade III of ISS on 5.9.1986. In this list, the name of the applicant was not included in view of the fact that he had been appointed substantively in the post of SRO in the Ministry of Defence w.e.f.16.7.1982 and as such from that date his lien in the ISS ~~is~~ stood terminated. It has further been contended ~~that~~ on abolition of the Joint Intelligence Organisation, the applicant who had become surplus was subsequently appointed as SRO on deputation basis for a period of 3 years w.e.f. 12.6.1986. The Ministry of Defence further advised that on expiry of his deputation on 11.6.1989, the services of the applicant might have to be placed at the disposal of the Central Surplus Pool under the Department of Personnel and Training. In so far as ISS is concerned, the applicant has lost lien long back and, therefore, his case would not be covered by the directions of the Hon'ble Supreme Court and that the applicant is not entitled to the relief(s) claimed.

4. We have heard arguments of the Learned Counsel for the parties and have given our anxious thought to the case of the applicant.

5. Admittedly, the applicant was confirmed on the post of

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of Senior Investigator. Subsequently, the applicant was selected to the ex-cadre post of SRO. Admittedly, he was appointed as SRO on 16.7.1982. This indicates that the applicant was confirmed on the post of Senior Investigator as well as on the post of SRO. It is well established principle of law that no person can be appointed substantively to two different <sup>Substantive posts</sup> at one and the same time. It follows from this that on his having been confirmed on the post of Senior Investigator, he continued his lien on that post so long he was not substantively appointed or confirmed in another post. Thus, the applicant's lien on the post of senior Investigator came to an end on 16.7.1982 on which date the applicant was confirmed in the post of SRO.

6. The Learned Counsel for the applicant has argued that he does not dispute about it. His submission is that his dispute is with respect to the post of Assistant Director, Gradd IV of ISS. The Learned Counsel has submitted that the applicant was not confirmed in the post of Assistant Director and, therefore, <sup>there</sup> ~~he~~ <sup>is</sup> ~~was~~ no <sup>of</sup> question <sup>of the</sup> termination of his lien on that post. According to the arguments <sup>of the</sup> Learned Counsel for the applicant, the applicant would not lose his place on the post of Assistant Director in ISS after his confirmation on 16.7.1982 in the post of SRO. With great respect to the Learned Counsel for the applicant, we are <sup>unable</sup> ~~not able~~ to agree with <sup>him</sup> ~~that~~. Admittedly, the applicant had left the post of Assistant Director (ISS) on 15.7.1980 and joined the ex-cadre post of SRO on 16.7.1980. Thus, according to the applicant himself both the posts were quite different from each other. That being so, it cannot be said that after confirmation in the post of SRO, the applicant had still a right to come back to the post of Assistant Director (ISS) on which <sup>post</sup> ~~date~~ he was promoted on ad-hoc basis.

7. The above shows that the applicant continued to have

his lien in the ISS till his confirmation on 16.7.1982 in the post of SRO. The applicant could have, therefore, been shown in ISS till 15.7.1982. The applicant's contention that as a result of the direction of the Hon'ble Supreme Court in the case of Narender Chadda, he was appointed to the Grade IV of ISS w.e.f.7.1.1977 and his promotion to Grade III as on 6.1.1981 will not help him as all this happened prior to 16.7.1982. It is clear that the draft seniority list of Grade III of ISS was issued in September, 1986 when the applicant had already ceased to be a member of ISS on 15.7.1982. The act of the respondents in not including the name of the applicant in the said seniority list cannot, therefore, be said to be unjust, against rules or any provision of law. The said seniority list does not also suffer from unfairness or manifest error of law.

8. No such rules, regulations or any law have been shown to us which may either expressly or impliedly entitle an official to continue on his previous post of ad hoc appointment or to count that period of service for seniority in case he, on his own application and selection by UPSC, is appointed and confirmed in another ex-cadre post and on abolition of that post is retrenched and rendered surplus. The written arguments submitted by the Learned Counsel for the applicant <sup>thus</sup> are misconceived.

9. Consequently, we do not find any reasons to interfere in the impugned draft seniority and hereby declare that the applicant is not entitled to the relief(s) claimed. The application, is therefore, dismissed with no order as to costs.

( S.R. SAGAR )  
MEMBER (J)

( B.C. MATHUR )  
VICE CHAIRMAN (A)

'PKK'

Forwarded by us in open court  
B.C. Mathur  
9.8.91