

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O. A. NO. 1189/88

New Delhi this the 2nd day of February, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

I. S. Sain

...

Applicant

By Sr. Advocate Ms. Shyamla Pappu

Versus

Union of India & Ors.

...

Respondents

By Advocate Shri P. P. Khurana

1. Whether to be referred to the Reporter ? *Yu*
2. Whether Reporters of local newspapers  
may be allowed to see the Judgment ?
3. Whether to be circulated to other  
Benches ?

*Mr*  
( V. S. Malimath )  
Chairman

/as/



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Shri I. S. Sain S/O Shri P. R. Sain,  
Asstt. Director (Economics),  
M.R.T.P. Commission,  
Travancore House,  
K. G. Marg,  
New Delhi - 110001.

... Petitioner

By Sr. Advocate Mrs. Shyamla Pappu with Shri  
Sanjeev Sabharwal, Shri M. R. Krishnamurthy  
& Ms. Ashima Nath, Advocates.

Versus

1. Union of India through  
The Secretary,  
Department of Economic Affairs,  
Ministry of Finance,  
North Block, New Delhi.
2. The Secretary,  
Department of Company Affairs,  
Ministry of Industry and  
Company Affairs, Shastri Bhawan,  
New Delhi.
3. The Secretary,  
M.R.T.P. Commission,  
Travancore House,  
K.G. Marg, New Delhi.

... Respondents

By Advocate Shri P. P. Khurana

O R D E R (ORAL)

Hon'ble Mr. Justice V. S. Malimath

This application is by Shri I. S. Sain, Assistant  
Director (Economics) serving in the M.R.T.P. Commission  
for issuance of a writ in the nature of mandamus  
directing the respondents to include the petitioner  
in the Indian Economic Service (for short IES) in  
view of the encadrement of this post vide notification



dated 19.9.1985, and for a further direction to accord to the petitioner appropriate seniority, promotion and other monetary benefits in the IES on the basis of which earlier promotion to higher grades is granted to officers who had held encadared posts on ad hoc basis. There is also a prayer for an injunction restraining the respondents from de-cadaring the post held by the petitioner and others from the IES, and to quash the letter dated 22.4.1987 (Annexure A-3) which is really a letter written by the Additional Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs to Justice G. R. Luthra, Chairman, Monopolies & Restrictive Trade Practices Commission, New Delhi.

2. This case has come on a reference made by the Division Bench comprising Hon'ble Shri C. J. Roy, Member (J) and Hon'ble Shri V. K. Seth, Member (A). Though the Division Bench was inclined to decide in favour of the petitioner, they felt that contrary view having been taken by the Tribunal in O.A. No. 224/88 between G. R. Singh vs. Union of India, it was appropriate that the entire case is decided by a properly constituted Full Bench. That is how the matter has come before us.

3. The relevant facts necessary for appreciating the contentions urged before us may briefly be stated as follows.

The petitioner was selected for the post of Assistant Director (Economics) by the Union Public Service Commission (for short UPSC) and appointed



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on the post on 12.12.1984. The petitioner has been continuing in the said post ever since his appointment. The Indian Economic Service Rules, 1961 were promulgated by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution which came into force on 1.11.1961. The said Rules provide for constitution of the IES and prescribe elaborate procedure for induction to the said Service. Rule 3 of the said Rules provides that the posts included in the IES shall be those specified in Schedule-1. The post held by the petitioner was not included in the Schedule-1 to the Rules on the date of their promulgation. The Schedule was amended by notification dated 19.9.1985 promulgated by the President in exercise of powers conferred on him by the proviso to Article 309 of the Constitution. By the said order the Schedule to the Rules was amended and all the three posts of Assistant Directors of M.R.T.P.C. were included in the Schedule. We are concerned in this case only with the post of Assistant Director, M.R.T.P.C. The petitioner's case is that by virtue of the amendment to the Schedule to the Rules by which all the three posts of Assistant Directors in the M.R.T.P.C. were included in the Schedule, he stood encadared in the IES. He, however, apprehended that the steps are being taken to de-cadre the post held by him. According to him, though he stood encadared to the IES on the inclusion of the post held by him in the Schedule, the respondents have not actually treated him as a member of the IES. It is in this background that the petitioner has approached the



Tribunal for the reliefs aforesaid. During the pendency of this application, Schedule-1 to the Rules was amended by the President under the proviso to Article 309 of the Constitution by notification dated 18.11.1985. By the said amendment the posts of Joint Director, M.R.T.P.C., Deputy Director Grade-III and Assistant Director Grade-IV, M.R.T.P.C. were omitted. The only interim direction issued during the pendency of this application made on 5.7.1988 is that any action taken during the pendency of the application shall be without prejudice to the petitioner's contention and subject to the ultimate result of the application.

4. The entire basis of the petitioner's case is that he has become a member of the IES as a consequence of the amendment of the Schedule to the Rules by which the post held by him, namely, that of Assistant Director, stood included in the Schedule. It was urged that though the State has the power to encadre any post and to de-cadre the same depending upon the policy decision having regard to the exigencies, the rights of the petitioner which have already accrued in his favour are not affected by the <sup>subsequent</sup> ~~the~~ action of the respondents in deleting the post held by the petitioner from the Schedule to the Rules. The contention is that the right to hold a post in the IES having stood vested in the petitioner on the date on which the post held by him was included in the Schedule, subsequent deletion of the said post three years later cannot deprive the petitioner of the vested right to continue to hold the post of Assistant Director, M.R.T.P.C. as a member of the IES.



The respondents, on the other hand, maintained that mere inclusion of the post held by the petitioner in the Schedule did not have the effect of making the petitioner a member of the IES. As the petitioner has not become a member of the IES by the mere inclusion of the post held by him in the Schedule to the Rules, the question of deprivation of the right accruing in his favour does not arise. As the entire basis of the petitioner's case is that he has become a member of the IES on the post held by him being included in the Schedule to the Rules, we have to examine this contention in the first instance. This takes us to the examination of the scheme of the Rules.

Rule 4 of the said Rules speaks of constitution of the Indian Economic Service and reads as follows :-

"There shall be a service known as the Indian Economic Service consisting of persons appointed to the Service under Rule 7, 7A and 8."

Rule 5 speaks of the grades and authorised strength. Rule 6 speaks of the controlling authority. Rule 7, 7A and 8 speak about induction of persons into the IES by way of initial constitution and at subsequent stages. It would be useful to extract the same as follows :-

**\*7. Initial Constitution of the Service:-**

(1) The Commission shall constitute a selection committee with the Chairman or a member of the Commission as President and not more than two representatives of the participating Ministries and the Chief Economic Adviser in the Ministry of Finance (Department of Economic Affairs) to determine the suitability of departmental candidates for appointment to the different grades and to prepare an order of preference for each grade for the initial constitution of the Service;



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(2) On receipt of the Committee's report, the Commission shall forward its recommendation to the Government and such recommendations may include a recommendation that a person considered suitable for appointment to a grade may, if a sufficient number of vacancies are available in that grade, be appointed to a lower grade. /not

(2A) Notwithstanding anything contained in rule 8, the persons who are appointed in accordance with sub-rule (2), to a grade lower than the grade for which they were recommended by the Commission for want of sufficient number of vacancies, shall be promoted to the Grade for which they were recommended as soon as vacancies become available in that grade.

(3) Departmental candidates who are not absorbed at the initial constitution of the Service will continue to work as at present.

(3A) Notwithstanding anything contained in rule 8, the departmental candidates referred to in sub-rule (3) may be considered by the Controlling Authority on the advice of the Board for appointment to the Service at a subsequent stage or stages in consultation with the Commission and the suitability of such candidates for appointment to various grades of the service shall be determined by a Selection Committee to be constituted by the Controlling Authority on the advice of the Board consisting a President who shall be the Chairman or a Member of the Commission, and three members.

Explanation : The absence of a member, other than the Chairman or a Member of the Commission shall not invalidate the proceedings of the Selection Committee.

(4) To the extent the authorised permanent strengths of various grades are not filled at the time of initial constitution by departmental candidates, it shall be open to the Controlling Authority to decide whether and if so to what extent recruitment of candidates from the open market is necessary. If any such recruitment is considered necessary after the appointment of such departmental candidates is over, the Controlling Authority shall decide the qualifications of such candidates and mode of selection of such candidates in consultation with the Commission.

7-A. Special Provision regarding certain departmental candidates :-

(1) Notwithstanding anything contained in rule 8, the Controlling Authority on the



advice of the Board shall constitute a Selection Committee consisting of a President, who shall be the Chairman or a Member of the Commission, and three members, and the suitability of the departmental candidates who fall under sub-clause (ii) of clause (d) of rule 2 for appointment to the different grades in the service shall be determined by such Committee.

Explanation :- The absence of a member, other than the Chairman or a Member of the Commission shall not invalidate the proceedings of the Selection Committee.

(2) A departmental candidate referred to in sub-rule (1), who is not selected for appointment to any grade in the Service will continue to hold his present post and may be reconsidered by the Controlling Authority on the advice of the Board for appointment to the Service at a subsequent stage or stages in consultation with the Commission. The suitability of these candidates for appointment to various grades of the service shall be determined by a Selection Committee to be constituted by the Controlling Authority on the advice of the Board consisting of a President who shall be the Chairman or a Member of the Commission, and three members.

(3) Omitted.

(4) Any departmental candidate referred to in sub-rule (1) who does not on selection to any grade in the Service desire to be absorbed in the service, may continue to hold the post held by him immediately before the selection as if he had not been selected.

8. (1) Future maintenance of the Service :- After the initial constitution of the Service has been completed by appointment of departmental candidates or otherwise and after promotions in accordance with sub-rule (2A) of rule 7 have taken place vacancies shall be filled in the manner as hereinafter provided;

(a) Grade IV-Assistant Director :-

(i) Not less than 75 per cent of the vacancies in this grade shall be filled by direct recruitment through an open competitive examination to be held by the Commission in the manner prescribed in Schedule-II:

Provided that 25 per cent of the said quota for direct recruitment may be set apart for a maximum period of 5 years for absorption of officers considered suitable for appointment at the initial constitution of the Service but who could not be so appointed in the absence of vacancies.



(ii) Not more than 25 per cent of the vacancies in this grade shall be filled by selection from among officers serving in offices under Government in Economic Posts recognised for this purpose by the Controlling Authority who shall prepare a list of such posts in consultation with the Commission. The Controlling Authority may in consultation with the Commission add to modify the list from time to time. The Selection will be made from amongst those who have completed at least 4 years of service on a regular basis in these posts on the basis of merit with due regard to seniority by the Controlling Authority on the advice of the Commission.

Provided that if any junior person in an office under the Government is eligible and is considered for selection for appointment against these vacancies, all persons senior to him in that office shall also be so considered notwithstanding that they may not have rendered 4 years of service on a regular basis in their posts.

(b) Grade III-Deputy Director: xxx

(c) Grade II-Junior Director: xxx

(d) Grade I-Director : xxx

(2) For the purpose of making promotions of officers of Grade II or Grade III or Grade IV as the case may be to the next higher grade, the Controlling Authority shall be assisted by a Selection Committee consisting of such members as may be appointed by the Board, and the Selection Committee shall at such intervals as may be approved by the Board, prepare a list of officers (hereinafter referred to in these rules as the Select List) who are to be promoted, and the order in which they are to be promoted, by the Controlling Authority.

(3) In the case of a departmental candidate appointed under rule 7A to Grade II or Grade III or Grade IV, as the case may be, the actual service rendered by him in the post which was eventually encadred in the Service and included in Schedule I and which he held or in which he held a lien at the time of its encadrement, shall be taken into account for computing qualifying service for promotion to the next higher grade, provided that the actual service so rendered by him was not ignored in fixing his seniority in the appropriate grade of the service."

*Handwritten mark*



Rule 9 provides that candidates appointed to the Service either by selection through competitive examination or otherwise or by promotion, shall be on probation for a period of two years. It obviously governs every person inducted into the IES whether under Rule 7, 7A or 8. Rule 9C speaks of date of appointment. It says that the date of appointment of a person to any grade or post on a regular basis shall - (1) in the case of a direct recruit to any grade or post be deemed to be the date on which he was recommended by the Commission for appointment to such grade or post, as the case may be, and (2) in the case of promoted officer to any grade or post be the date on which he was included in the Select List for promotion to that grade or post as the case may be, or the date on which he was appointed to the grade or post as the case may be, whichever may be later. This Rule makes it clear that the date of appointment to a particular grade in the IES is regulated by the statutory provision. It is only so far as the direct recruits are concerned the date of appointment shall be deemed to be the date on which the person who was recommended by the Commission for appointment. In the case of promotion, it shall be the date on which the name of a person is included in the select list for promotion, and in all other cases it shall be the date on which the person is appointed to a grade or post. It would be helpful to bear in mind the definition of the expression 'departmental candidates' which has been defined in Rule 2(d) and reads as

follows :-



"(d) "Departmental Candidates" means persons who have been appointed otherwise than on tenure basis in consultation with the Commission, or on the recommendation of a Departmental Promotion Committee and who hold posts or hold liens on posts —

(i) Specified in Schedule I, on the date of sanction of the Service; or

(ii) Encadred in the Service and included in Schedule I, after the initial constitution of the Service, on the date of such encadrement;"

5. The scheme of the Rules which we have extracted above makes it clear that the induction into the IES is regulated by three provisions. Rule 7 speaks of initial constitution. It is not the case of the petitioner that he stood inducted into the IES by way of initial constitution of the Service. Rule 7A is a special provision regarding certain departmental candidates, whereas Rule 8 is a provision which speaks of future maintenance of the Service after the initial constitution under Rule 7 has been completed. Future maintenance of the Service under Rule 8, so far as Grade IV Assistant Directors, with which we are concerned, says that 75 per cent of the vacancies shall be filled by direct recruitment through an open competitive examination to be held by the Commission in the manner prescribed in Schedule-II. The proviso says that 25 per cent of the said quota may be set apart for a maximum period of five years for absorption of officers considered suitable for appointment at the initial constitution of the Service but who could not be so appointed in the absence of vacancies. So far as the remaining 25 per cent of the vacancies in Grade IV Assistant Directors are concerned, they have to be filled up by selection from among officers serving



in offices under the Government in Economic posts recognised for this purpose by the controlling authority so as to prepare a list of such posts in consultation with the Commission. The selection has to be made from among those who have completed at least four years of service on a regular basis in the said post on the basis of merit with due regard to seniority by the controlling authority on the advice of the Commission. It is, therefore, clear that so far as future maintenance of the Service contemplated by Rule 8 is concerned, in so far as it pertains to Grade-IV Assistant Directors, the induction of those who are already in service holding Economic posts requires fulfilment of two conditions. The first condition is that the particular Economic post must be duly recognised by the controlling authority in consultation with the UPSC. The second condition to be satisfied is that the incumbent of such a post which has been recognised by the controlling authority should compete with other similarly situate and get selected on the basis of merit in accordance with the procedure prescribed. It is not the case of the petitioner that the post of Assistant Director Grade-IV in the MRTPC held by him was recognised by the controlling authority under Rule 8 or that he was duly selected on the basis of merit for being inducted into the IES. It is, therefore, clear that the petitioner cannot claim his rights as a member of the IES under Rule 8 of the Rules. We have already held that it is not the case of the petitioner and it cannot be his claim that he has become a member of the IES by way of initial constitution



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under Rule 7. What, therefore, remains to be examined is as to whether the petitioner stood inducted into the IES under the only remaining provision in this behalf, namely, Rule 7A. This is a special provision regarding certain departmental candidates and provides for induction notwithstanding anything contained in Rule 8. Sub-rule (1) of Rule 7A says that induction under the said provision has to be done on selection by a selection committee constituted by the controlling authority on the advice of the Board consisting of a President who shall be the Chairman or a Member of the Commission and three members. It is such a duly constituted committee that is required to assess the suitability of the departmental candidates who fall under clause (ii) of clause (d) of Rule 2 for appointment to different grades in the Service. In order to get inducted under Rule 7A, the person concerned should be a departmental candidate who falls under sub-clause (ii) of clause (d) of Rule 2. Such a person should be duly selected by the selection committee constituted for the purpose. It is not the case of the petitioner that he was duly selected by the selection committee contemplated by Rule 7A for induction into the IES. Selection by the selection committee being the essential condition for induction into the IES, the petitioner cannot claim that he came to be inducted into the IES in accordance with the Rule 7A. We shall examine the contention of the learned counsel for the petitioner which is to the effect that the petitioner is not a departmental candidate falling under sub-clause (ii) of clause (d) of Rule 2. Let us assume for the sake of argument that



the petitioner is right in saying that he is not a departmental candidate falling under sub-clause (ii) of clause (d) of Rule 2. If the petitioner is not a departmental candidate contemplated by Rule 7A, it is obvious that he cannot claim induction into the IES under Rule 7A. We have already pointed out that the petitioner has not been inducted into the IES under Rule 7 or Rule 8 and that the only other provision under which induction into the IES is contemplated is Rule 7A. If the petitioner cannot invoke Rule 7A on the ground that he is not a departmental candidate falling under sub-clause (ii) of clause (d) of Rule 2, it does not advance his case any further as it is on that ground alone that he cannot be considered for induction under the said provision. If, on the other hand, the petitioner is regarded as a departmental candidate, the petitioner can establish that he has become a member of the IES only when he is duly selected by the selection committee constituted as provided in sub-rule (1) of Rule 7A. It is not the case of the petitioner and no material has also been placed before us to show that the petitioner was selected by a selection committee for appointment to the IES in the cadre of Assistant Directors. It, therefore, follows that the petitioner has failed to establish that he stood inducted into the IES under Rule 7A. We have, therefore, no hesitation in holding that the petitioner did not become a member of the IES by his induction under Rule 7, 7A or 8 of the Rules, which, in our opinion, are the only provisions which contemplate induction into the IES.



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6. The learned counsel for the petitioner, however, maintained that the induction of the petitioner took place by the operation of law. It was urged that when the post held by the petitioner was included in Schedule I it had the effect of making the petitioner a member of the IES. We have already discussed the scheme of the Rules and pointed out that induction into the IES under the Rules is contemplated only by three statutory provisions, namely, Rules 7, 7A and 8. There is no other mode by which induction into the IES under the Rules is permissible. Inclusion of the name of the post held by the petitioner, it is urged, has however brought about the induction of the petitioner into the IES. Rule 3 of the Rules says that the posts included in the IES shall be those specified in Schedule I. This provision makes it clear that the effect of including a particular post in the Schedule is that such a post becomes the part of the IES. When the post held by the petitioner was included by the amendment to Schedule I in the year 1985, the said post stood included in the IES. In other words, the effect of such inclusion is that the said post has to be filled up by a member of the IES. The inclusion of the name of a particular post in the Schedule has the effect of only bringing that post in the IES, but it does not have the effect of automatically inducting the incumbent of that post into the IES. Rule 3 (1) does not say so nor is there any other provision of the Rule which says that the incumbent of a post which was included in the Schedule automatically becomes a member of the IES. Even after the induction of the post held by the



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petitioner into the IES, the petitioner could get inducted into the IES only under one or the other of the statutory provisions, namely, Rule 7, 7A or 8 of the Rules. We have no hesitation in holding that merely because a particular post is included in Schedule I to the Rules, the incumbent of such a post does not automatically get inducted into the IES. Such induction is possible only when steps for such induction are taken in accordance with the statutory rules, namely, Rules 7, 7A and 8 of the Rules. We have already, after a detailed examination, recorded our finding to the effect that the petitioner did not stand inducted into the IES under Rule 7, 7A or 8. We have, therefore, no hesitation in holding that the petitioner did not become a member of the IES at any point of time. As the petitioner did not become a member of the IES at any point of time, the question of effecting his vested right to continue as a member of the IES did not at all arise in this case.

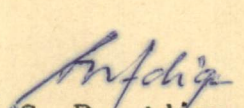
7. By the issuance of the subsequent notification in the year 1988 the post of Assistant Director held by the petitioner has been omitted from Schedule 1 of the Rules. As already stated, the State has the power to encadre or decadre posts. That the State has such a power was also not disputed and rightly so by the learned counsel for the petitioner. Hence, the decadring of the post held by the petitioner during the pendency of these proceedings cannot be faulted.

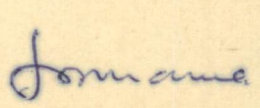



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8. Though in the light of the view we have expressed on the merits of the contentions it is not necessary to advert to the decisions mentioned in the referring judgment, we would like to briefly advert to the same. In O.A. 224/88 between G. S. Singh vs. Union of India it has been held that encadrement and decadrement of a post is a policy matter which has to be taken by the Executive taking into account all the relevant factors and that the Tribunal cannot substitute itself for the controlling authority or the participating department. It was held in the circumstances that no interference was called for by the Tribunal in regard to the decisions bearing on encadrement and decadrement of posts. The principle stated, with respect, is right. The other decision is reported in ATR 1987 (2) CAT 475 between G. S. Bhatia vs. Union of India. That was a case which on the facts, it was held that the petitioner therein had acquired a vested right to the post he having been duly selected for induction into the IPS. The decision having rested on those findings, it would not be of any assistance in the present case.

9. For the reasons stated above, this application fails and is dismissed. No costs.

  
( S. R. Adige )  
Member (A)

  
( J. P. Sharma )  
Member (J)

  
(V. S. Malimath)  
Chairman

/as/