

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH NEW DELHI

Original Application No. 311 of 1986

versus

Hon'ble Mr. Justice L.C. Srivastava, V.C.

Handbook Ms. Ushe savara, Member (A)

(By hon'ble Mr. Justice U.C.Grivastava, v[])

The applicant who belongs to the Central Sectt.
having joined
service, after his ~~was~~ release, from the Army has prayed
that his seniority in the Grade-I (Under Secretary) and
selection Grade (Deputy Secretary) of Central Secretariate
service (C.S.C.) may be refixed retrospectively over his
erstwhile juniors in the grade of Section Officer on the
basis of his deemed date of appointment from 1.5.1965
with consequential benefits.

2. The applicant ~~who~~ was appointed to Section Officer's grade in the Central Sectt. Services w.e.f. 1.5.1974, on the basis of the results of the I.R.S. etc. (Released Emergency Commissioned/short service Commissioned Officers') Examination which was held by the UPSC in the year 1972, against a permanent vacancy reserved for Emergency Commissioned/short service Commissioned Officers in accordance with the Released Emergency Commissioned Officers and short service Commissioned Officers (reservation of Vacancies) Rules of 1967 and 1971 ~~as~~ on the basis of the applicant joining the Army as Emergency Commissioned Officer on 10th October, 1963, the

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applicant was assigned deemed seniority in the grade of Section Officer with effect from 1st May, 1965, in terms of the provisions of the above rules.

3. According to the applicant, because of seniority he was due for consideration for inclusion in the select list of Grade-I of Central Sectt. Service (under Secretary) in 1974 and again in 1975, but ~~he~~ was denied such consideration on the ground that ~~the applicant~~ was not a permanent Section Officer and hence not eligible for inclusion in the said Select List. He was for the first time considered for inclusion in the said select list in the year 1976 and infact ~~he~~ was included and promoted to that (Under Secretary) w.e.f. 7.7.1977. As a result of the same, he lost seniority to a large number of his junior Section Officers in the Grade-I of Cso and Selection Grade of Cso (Deputy Secretary) to which grade he was promoted on 31.12.1983, on the basis of 1983 select List of Selection Grade of Cso.

4. The applicant's claim is that he was entitled to two chances for competing for IAS, etc., through competitive examinations for selection of Released Emergency Commissioned/Short Service Commissioned Officers. He availed himself of the first chance in 1967 by appearing in the IAS, etc. in 1967, immediately after his release from the Army service on 1.7.67, but missed the chance by two marks. When he again applied for the same, but his application was rejected on the ground that the applicant's first admissible chance was in his preceding year of

Contd. 3/-

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release, i.e., in 1966 and thus, the 1967 chance was deemed to be the applicant's second chance. The applicant made a representation against the same relying on the rules for I.M.S. etc. (released EC/SC Officers) Examination, 1972, which reads as under :-

"Emergency Commissioned Officers belonging to any of the Courses LC-3 to LC-12 who were released in Commission and could not apply for admission to IAS, etc., (released EC/SC Officers) Examination held in 1966 as they were not aware that they were due for release in 1967 and could not thus take the examination if otherwise eligible, according to the rules of that Examination, may take the examination to be held in 1972 as a special case". - Rule 9(b).

The applicant appeared in that Examination in 1972, and was appointed as Section Officer in the C.S. w.e.f. 1st May, 1974. In the process, the applicant had to suffer loss of employment, service and seniority for four years. ~~The applicant's~~ name was not included in the consideration list for the year 1975, as ~~the applicant~~ had not yet completed the period of probation of 2 years. Under rule 12 of C.S. Rules 1962, permanent Section Officers with not less than eight years of approved service in the grade could be considered for inclusion in the select List of Grade I of C.S. The applicant represented against the same. According to the applicant, Even assuming (but not admitting) that he was not eligible for consideration for inclusion in the select panel of Grade-I of C.S. in the years 1974 and 1975, because of non-fulfilment of the condition of confirmation the grade of Section Officer, he could not be made to

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suffer permanent loss of seniority after promotion. As his name ~~as~~ was included in the select panel in the year 1976 when he was considered for the first time and the earlier denial of consideration in the year 1974 and 1975 was not because of reasons attributable to him he had never been found unfit, and his original seniority should have been restored. Although, according to ~~the~~ ^{him} applicant he was given his due seniority in the grade of Section Officer by giving him the benefit of the Army service, but at the same time its consequential benefits were curtailed/restricted by denying him his due promotion to and seniority in the higher grade.

5. The respondents have refuted the claim of the applicant and have stated that on the basis of seniority assigned to the applicant in the Section Officers Grade of Cso to the year 1965 after taking into account the service rendered by him in the army, he was placed below one Smt. Kanti Devi who was appointed to the Section Officer's grade as direct recruit on the results of the IAS etc. Examination, 1963. The said Smt. Kanti Devi was considered for promotion to grade I of the Cso(Under Secretary, for the 1974 select list and having been included in the select list on the recommendations of the Departmental Promotion Committee, was given promotion to Gr.I of Cso(Under Secretary) on regular basis w.e.f. 1.11.1975. As the applicant was appointed as a Section Officer w.e.f. 1st May, 1974, and was on probation on the crucial date i.e. 1st July, 1974, the date from which select list for 1974 reckoned, his name was not included in the consideration list because of the specific provisions of Rule 12(2) of Cso Rules, 1962, which states that "vacancies in

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Grade 1 shall be filled by promotion of permanent Officers of the Section Officers' Grade who have rendered not less than eight years(ten years in 1974 and 1975) approved service in that grade". The applicant was also not included in the consideration list since he continued to be on probation in the Section Officer's Grade on the crucial date of the select list viz. 1.7.1975, he was only confirmed w.e.f. 1.5.1975 after completion of the probation period and thus that is why his name was included in the consideration list for drawing up the select list for the year 1976. He was appointed to Grade 1 of CCS w.e.f. 7.7.1977. The respondents have thus denied that their action so challenged was arbitrary, wrongful, unjustified, inequitable, discriminatory and contrary to the principles of natural justice. From the facts it is clear that the applicant missed his first chance because he could not qualify. It is only when he was permitted on his representation if though it was bit late he succeeded. It may be/he would have been permitted earlier he might have qualified and joined the post earlier which would have earned seniority and promotion. He was to rank below direct recruit of a particular ^{year} in accordance with rules that was done. In the event of his success in 1972 he could not have claimed or given seniority over Smt. Kanti Devi. The year of allotment one gets in accordance with law and that may be even if a period prior to a period when the person concerned was actually born in service. The validity of such

retrospective operation of allotment year has been upheld by Hon'ble Supreme Court in the case of I.F.S/ I.P.S service for those who were earlier emergency commissioned officer/ short service commission officer recruited to these services in the case of Union of India Vs. S. Krishna Murthy (1989) 4 SCC 689. But if year of allotment is by operation of law is given retrospective effect seniority or continuous service from that date or year cannot be claimed or counted. Year of allotment and seniority or continuity do not overlap each other but there is a cleavage between them. No one can claim seniority or start of service even before he was born in service. In the case of State Bank of India Vs Yogendra Kumar Srivastava (1987) 3 SCC 10 it was hold that probationary/Trainee not being existing officers cannot get seniority over 'existing officers'. The position in this case is not different. The applicants seniority or period of service cannot start from any date anterior to entry in service after inclusion of name in select list. As such the claim of the applicant in this behalf is not sustainable. Regarding delayed allowing of appearance in examination much later the same having become a closed matter cannot be reopened.

6. In these circumstances, the application of the applicant lacks merit and is liable to be dismissed, and accordingly, it is dismissed. No order as to the costs.

R. Varanasi
Member (A)

Ver
Vice Chairman

Dated: 24th December:1993:

(RKA)