

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 513/ 1986
T.A. No.

DATE OF DECISION July 28, 1989.

R. Doraishwami _____ Applicant (s)

In person _____ Advocate for the Applicant (s)

Union of India Versus _____ Respondent (s)

Shri N. S. Mehta _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman.

The Hon'ble Mr. P.C. Jain, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes.*
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*
4. To be circulated to all Benches of the Tribunal ? *No.*

(Judgement of the Bench deliver JUDGEMENT
ed by Hon'ble P.C. Jain, Member (A).)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, as a consequence to his Military Service from 1.5.1963 to 30.6.1968, has prayed for refixation of his seniority in the grade of Section Officers and consequential benefits. He has sought the following specific reliefs: -

- "(1) The applicant prays that his seniority in the Grade of Section Officers be assigned in the Select List of Section Officers of 1965.
- (2) Consequential fixation of his pay w.e.f. 1st July, 1968 i.e. date when he re-joined the Ministry of Economic Coordination and Supply, Department of Supply.
- (3) Consequent refixation of his selection as Under Secretary in the Select List of the appropriate year in which the Section Officers of 1965 seniority was considered. Consequent fixation of seniority in the pay in the grade of Under Secretary and

consequent revision of his seniority and confirmation in the Civil List of C.S.S. Grade I Officers.

(4) Any other relief which the Tribunal is pleased to grant with due regard to the facts and circumstances of this case."

2. The applicant was appointed as a permanent Assistant under the Government of India on the result of the UPSC Assistants Grade Examination held in 1955. During the emergency following the Chinese aggression in 1962, he was commissioned as Emergency Commissioned Officer in the Army Corps of E.M.E. and rendered military service from 1.5.1963 to 30.6.1968. He reverted to his post of Assistant in the parent civil Department (now Department of Supply) with effect from 1st July, 1968. On the question of seniority, confirmation and promotion of civil Government servants during their absence on military service during the aforesaid emergency, orders were issued by the Ministry of Home Affairs vide Memorandum No.35/15/63-Ests(B), dated the 28th April, 1965 (Annexure III to the application). Clause III (f) of the Memo. ibid provides that where civil Government servants are eligible for promotion in their parent department / office through competitive examinations, which are limited to departmental candidates only, a civil Government servant who was eligible to take such an examination before taking up military service or who became eligible to take such examination while away on military service, should, on his reversion from such service, be allowed as many chances to compete at such an examination as would have been available to him but for his joining military service and given the necessary age and length of service relaxations for this purpose. (emphasis supplied).

3. The applicant's case is that four examinations were held in the years 1963, 1964, 1965 and 1966 during his absence and he could take any three of these if he had not gone on military service. In the application, it was contended that

(See)

after his reversion from the military service, first two examinations were held in 1969 and 1970 in which he appeared but could not make it to the select list and in the third examination held in 1971, he applied for admission, but did not take the examination. In 1972, no examination was held, but in the next examination held in 1973, which he took, he successfully made it to the select list. However, in the rejoinder affidavit, he admitted that an examination was held in 1972 and that no examination was held in 1970. Thus, on his reversion from Military Service, four examinations were held in 1969, 1971, 1972 and 1973 and the applicant could make it to the final select list based on 1973 Examination. He competed in 1969 and 1971 Examinations, applied for admission to 1972 Examination, but did not take it. His contention is that since he had availed of only three opportunities after his reversion from military service, he should be given the benefit of seniority etc. in accordance with the Ministry of Home Affairs Memorandum dated 28.4.1965, referred to above, but his request was finally rejected vide order dated 5/6th October, 1983 (Annexure XII to the application).

4. The respondent's contention is that the request of the applicant has been rightly rejected in terms of the Ministry of Home Affairs Memorandum dated 28.4.1965.

5. The short point for consideration in this case is whether the 1972 Examination held for departmental candidates for promotion to the grade of Section Officers could be included in the three chances which the applicant was entitled to take after his reversion from the military service. Ministry of Home Affairs Memorandum dated 28.4.65 in clause III (f) thereof refers to the number of chances while the applicant is taking the plea of attempts. His plea is that he did not compete for the 1972 Examination.

(See)

It was admitted on behalf of the respondents that to compete would mean taking the examination. The crucial point, however, is that in the order concerning the benefits of the said military service, a civil Government servant is allowed as many chances to compete at the Limited Departmental Examination as would have been available to him but for his joining military service. It is not disputed that the 1972 examination was one of the chances which the applicant could take to compete, but he did not take the examination even though he applied for it. It is also specifically laid down that for the purpose of reckoning the available opportunity, an examination notified within three months from the date of joining the civil post by the Government servant after return from military service may be ignored unless he actually appears at it. The 1972 examination is not such which could be ignored under this clause. It is, therefore, clear that the applicant could not successfully compete in the first three available chances, namely, the examinations held in 1969, 1971 and 1972 and as such he is not entitled to the benefits of seniority etc. with retrospective effect on the basis of the Ministry of Home Affairs Memorandum dated 28.4.1965.

6. It has been argued before us that the Rules for the Limited Departmental Competitive Examination for inclusion in the select list for the Section Officers' Grade of the Central Secretariat Service held by the Union Public Service Commission in December, 1965, which were published on the 26th June, 1965 (Annexure 'B' to the Rejoinder Affidavit) and the Notice dated the 22nd August, 1970 (Annexure 'A' to the Rejoinder Affidavit) clearly show that it is taking of the examination in any one or more subjects which would determine whether a candidate has competed at the examination. This, however, in our view does not change the position in regard to the relief asked for in this application because under the

Ministry of Home Affairs Memorandum dated 28.4.1965, relevant factor is not competing at the examination but the opportunity to compete.

7. The applicant has also invited our attention to some inherent defects, as alleged in his application, in the Ministry of Home Affairs Memorandum dated 28.4.1965. These refer to the possibility of his obtaining 'Outstanding' or 'Very Good' reports if he had continued in the civil post; special weightage not being given for the Class I service rendered in the Army; no consideration being given for the real life difficulties which he faced in preparing for the departmental examination on reversion from military service; and for not providing for assigning increased seniority by allowing the service rendered in Class I post.

8. A perusal of the Ministry of Home Affairs Memorandum dated 28.4.1965 shows that military service will be counted towards seniority in the civil post; temporary / officiating civil Government servants are eligible for confirmation in their civil posts while they were away on military service; civil Government servants of the category in which the applicant was placed, were allowed as many chances to compete in the competitive examinations limited to departmental candidates only for purpose of their promotion in the parent department as would have been available to them but for their joining the military service and if they competed successfully at the first / second / third available opportunity, they would be deemed to have passed the examination at the first / second / third occasion they would have appeared had they not joined military service, and were to be assigned rank at the bottom of the corresponding select list and to be promoted retrospectively with effect from the date from which they would have been promoted on the basis of such rank, etc. Moreover, the applicant had preferred representation on these points which were considered

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and rejected by self-speaking orders. In our view, the instructions issued by the Ministry of Home Affairs in their Memorandum dated 28.4.1965 are fairly exhaustive, specific and reasonable.

9. In view of the above discussion, we hold that the applicant is not entitled to refixation of his seniority in the grade of Section Officers and consequential reliefs as claimed by him as he failed to successfully compete in the first three available opportunities available to him after his reversion from the military service. Accordingly, we see no merit in this application which is rejected. In the circumstances of the case, there is no order as to costs.

Case 2817/89
(P.C. JAIN)

MEMBER(A)

Ansark
28/7/89
(P.K. KARTHA)
VICE CHAIRMAN