

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 698/86 1986
T.A. No. &
OA No. 1156/86

DATE OF DECISION _____

Shri Bhawani Shankar Kapila Petitioner
&

Shri M.S. Sankaranarayanan & Ors
Ms Shyamla Pappu, Senior Counsel Advocate for the Petitioner(s)
with Shri A.K. Kohli, counsel
Versus

Union of India and Ors Respondent

Shri M.L. Verma, counsel Advocate for the Respondent(s)

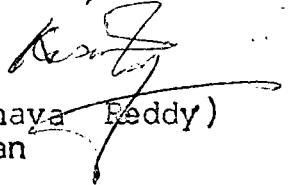
CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member

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. Whether to be circulated to other Benches? No


(Kaushal Kumar)
Member


(K. Madhava Reddy)
Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Regn. No. OA-698/86

Shri Bhawani Shankar Kapila ... Applicants
Vs

Cabinet Secretary & Ors ... Respondents

Regn. No. OA-1156/86

Shri M.S. Sankaranarayanan & Ors ... Applicants

Vs

Union of India and Ors ... Respondents

CORAM:

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman
The Hon'ble Mr. Kaushal Kumar, Member

For Applicants ... Ms Shyamla Pappu,
Senior Counsel with
Shri A.K. Kohli,
counsel.

For Respondents ... Shri M.L. Verma,
Counsel.

(Judgement of the Bench delivered by
the Hon'ble Mr. Justice K. Madhava Reddy, Chairman)

These two Applications under Section 19 of the
Administrative Tribunals Act, 1985 by Economic and
Statistical Investigators in various Departments/
Ministries like Finance, Defence, Agriculture, Planning
Commission, Department of Statistics, Mines, Commerce,
Industry, Urban Development, Health, Tourism, Shipping
and Transport and Superintendents in Field Operation
Division of National Sample Survey Organisation (N.S.S.O.),
Ministry of Planning and also Small Industries Promotion

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are
officers in DC - S.S.I., Ministry of Industry for issuing
a writ in the nature of mandamus directing the respondents
to promote and confirm the Investigators eligible till
11.2.1986 in Grade IV of Class I posts of Indian
Economic Service (for short IES) and Indian Statistical
Service (for short ISS) with effect from the date
their juniors (ad hoc promotees) were confirmed therein
and to direct promotion of all eligible Investigators
who have been denied promotion as a result of the ban
on promotions between 1981 and 1985 to Grade IV Class I
posts with all consequential benefits.

As both the applications raise common questions
for consideration, they can be conveniently disposed off
by a common Judgment. The facts necessary to appreciate
the contentions raised in support of the relief sought fall
within a narrow campus and they are as under:

IES and ISS were constituted in the year 1961
under the Indian Economic Service Rules, 1961 and the
Indian Statistical Service Rules, 1961 respectively.
The post of Investigator is a Class II post in these
Services in the pay scale of Rs. 550-900. It is a
feeder post to Grade IV of Class I in IES/ISS. The
minimum qualifications for being recruited to Grade IV
Class I post as prescribed under the IES and ISS Rules
are -

- (i) A Post Graduate Degree in Economics or Statistics or Commerce or Mathematics; and
- (ii) Two to three years' experience in the related field.

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The initial constitution of both these Services is under Rule 7 of the respective rules. After the initial constitution of the Service is completed in accordance with Rule 7, for maintenance of the service, all future vacancies are required to be filled in accordance with Rule 8. According to Rule 8(1)(a)(ii), an Investigator has to complete "at least four years of service on regular basis" before he becomes eligible for being considered for selection and appointment to the next higher post of Grade IV of Class I Service. While 60% of the posts in this grade are required to be filled in by direct recruitment through open competitive examination to be held by the Union Public Service Commission (for short UPSC), 40% of the vacancies in this grade have to be filled in by selection from amongst officers serving in offices under the Government in economic or statistical posts. For this purpose, the Controlling Authority is required to draw up a list of such posts in consultation with the UPSC. The Controlling Authority has to prepare a select list including therein the names of persons who possess qualifications referred to above and who hold the posts included in the list so prepared "on the basis of merit with due regard to seniority" on the advice of the UPSC. The proviso to Rule 8(1)(a)(ii) lays down

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that "if any junior person in any 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 may not have rendered 4 years of service on a regular basis in their posts." It would be convenient to extract Rule 8(1)(a)(ii) (as it stood before its amendment in 1981) which reads as under:

"8(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 the 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".

After the amendment this part of Rule 8(1)(a)(ii) reads as under:

"(ii) Not more than 40% (1-8-81) of the vacancies in this grade shall be filled by Selection from among officers serving in offices under the Government in Statistical posts recognised for this purpose by the Controlling

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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".

Some of the applicants were recruited in the year 1966 and have been serving as Investigators. Although the post of Investigator constitutes the feeder post for Departmental selection for recruitment to the post of Grade IV of Class I posts in the IES and ISS Services to the extent of 40% and although the applicants have been functioning as Investigators for a long number of years, no combined seniority list of Investigators was drawn up. That list was prepared and circulated for the first time in the year 1981. It may, however be pointed out that the Investigators in different Ministries and Departments hold isolated posts. There is no common cadre for them nor is their



recruitment regulated by any common Recruitment Rules. No Departmental Promotion Committee (DPC) meeting was held prior to 1970. When in 1970 it was held, the selection was limited to persons who had become eligible by completing 4 years of service as Investigators prior to 31.12.1966. For over 12 to 15 years thereafter, no DPC was held although the vacancies in the posts of Grade IV Class I in both IES and ISS went on steadily increasing. The applicants contend that in the absence of an integrated seniority list for the feeder post holders who have been serving in different Departments/Ministries, promotions to the post of Grade IV Class I were made on an ad hoc and local basis, depending upon the exigencies of service. In this confusing state of promotions, a further complication was created on account of ban on promotions in 1982. In the result, the available vacancies were filled in by direct recruitment, far exceeding the actual number of vacancies. The applicants complain that this has resulted in an acute stagnation in the category of Investigators on the one hand and promotion of Investigators without any regard to seniority on an ad hoc basis

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on the other hand, causing grave injustice to seniors.

While the matter stood thus as between the promotees who were promoted on an ad hoc and local basis and the direct recruits, controversy as to their inter se seniority arose which gave rise to Writ Petition No. 1595/79 before the Supreme Court. To this Writ Petition, some of the direct recruits to Grade IV posts in the two Services were impleaded in a representative capacity to represent all the direct recruits in the service. It is the case of the applicants that so far as the promotees were concerned that Writ Petition was not representative in character. The Hon'ble Supreme Court while allowing the Petition inter alia, directed the Union of India "to fill up within four weeks from today, the vacancies available to the departmental candidates under Rule 8(1)(a)(ii) w.e.f. the date from which the applicants became entitled to be promoted on a regular basis." It is the grievance of the applicants that while the applicants in the said Writ Petition were senior to the applicants herein and were asserting their claim for seniority over direct recruits in that Writ Petition who were senior to the applicants herein, there were also several other ad hoc promotees of Grade IV Class I of IES and ISS who were junior to the applicants herein and were promoted or appointed on an ad hoc basis and even those were regularised purportedly in compliance with

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the orders of the Hon'ble Supreme Court dated 11.2.1986. without considering the merit and/or the seniority of the applicants. Neither the Union of India nor the applicants therein nor anyone else brought to the notice of the Supreme Court that the applicants ^{herein} were senior to several ad hoc promotees ^{to} Grade IV Class I IES and ISS Services. The applicants not being party to the said Petition obviously could not place these facts before the Supreme Court. It is further urged that the respondents did not comply with the orders of the Supreme Court within the stipulated period and when a Contempt Petition was moved, on the representation made by the respondents behind the back of the applicants, the Supreme Court directed that "all ad hoc promotees as on date in the Indian Statistical Service and in the Indian Economic Service to be absorbed on a regular basis and till such absorption is done, the quota stipulated by the Service Rules will be held in abeyance by invoking the relaxation rule contained in the Service Rules" (Vide Judgement of the Supreme Court dated 11.2.1986 reported in 1986(2) SCC p. 157 in Narender Chadha vs. Union of India.)

The main grievance of the applicants is that juniors in their respective Departments/Ministries who were appointed on an ad hoc basis locally contrary

(1) 1986(2) SCC 157 = AIR 1986 S.C. 638

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to the Service Rules have been regularised ignoring the claims of the seniors like the applicants. This is in clear violation of the proviso to Rule 8(1)(a)(ii) which enjoins 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". The applicants also claim that the principles underlying the Next Below Rule (NBR) should also guide these appointments and regularisations. They claim that this Rule enunciated in G.I.F.D. endorsement No.F-27(1)-Ex.1/36 dated 20th February, 1936 and G.I.H.D. No. 52/36-Ests, dated the 6th February, 1936 clarifies the position and entitles the applicants to promotion at least along with, if not earlier than the date w.e.f. which their juniors were promoted. The applicants submit that they were confident that they would be given the benefit of this Rule and when the respondents failed to follow their own guidelines, they moved the Supreme Court by way of Writ Petition No. 825/86 highlighting the grievous detriment suffered by them on account of the arbitrary implementation of the Judgement

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of the Supreme Court. The Supreme Court by its order dated 6.8.1986 permitted the Applicants to move the Tribunal in the following words:

"The petitioners may approach the Central Services Tribunal. The Writ Petition is dismissed with this observation. After the case is filed before the Tribunal, the Tribunal shall hear the case expeditiously (Annexure 'P')".

The facts averred by the Applicants are really not in dispute. All that the respondents claim is that they have only strictly complied with the directions of the Supreme Court contained in its Judgement dated 11.2.1986. It is their case that the Supreme Court while issuing the directions was very much aware of the fact that some Senior Investigators would be affected if ad hoc promotees were regularised and given seniority. Attention in this behalf is particularly drawn to Para 24 of the Judgment of the Supreme Court (1) in which the Supreme Court observed:

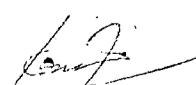
"We are aware that the view we are taking may upset the inter se seniority between those promotees who were included in the Select Lists of 1970, 1982 and 1984 and those who were included later on or who have not been included at all till now. The existence of this possibility should not deter us....." (emphasis supplied).

The respondents plead that the scope of the judgment that there was cannot be enlarged and no direction to promote all those who were not in fact promoted at least

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on an ad hoc basis and treat them as seniors to those who were regularised and given seniority only because they were promoted on an ad hoc basis and were continuously discharging the duties of Grade IV Class I Officers. The respondents state that the appointments could not be effected on a regular basis all these years only because of the pendency of CWP 1595/79. The Respondents also plead that the applicants were also fully aware of the progress of CMP No.2604 of 1985 in CWP 1595/79 (Narender Chadha & Others Vs. Union of India and others) and could have clearly foreseen the consequences of such regularisation made in pursuance of the Supreme Court Judgment; they should have intervened before the Supreme Court to protect their interests. Not having done so, when the respondents are merely implementing the orders of the Supreme Court in regularising the promotions and preparing the seniority list, the applicants cannot be granted any relief. It is also argued that neither the Next Below Rule nor the principles underlying it nor the proviso to Rule 8(1)(a)(ii) can have any application when the regularisation of promotions and seniority are being determined under the directions of the Supreme Court.

The ad hoc appointees who are regularised and have become seniors to the applicants were not selected by the Competent Authority after considering all the



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eligible Investigators. Some of those appointed had not even put in 4 years of service on a regular basis as Investigators. Most of them were juniors not only to the applicants in the other Departments/Ministries but even in their own Departments/Ministries. The only excuse for regularising such appointments is that they were appointed ad hoc and have been continuing as such for a number of years. Even so, at least the seniors in the Departments/Ministries should have been appointed for a short term. These appointments are undoubtedly contrary to Rules. Even the ad hoc appointments are contrary to the Rules and are violative of Art.14 and 16 of the Constitution. But these ad hoc appointees have continued over a long period uninterruptedly and discharged the duties of these posts. If the Rules were to be strictly followed, there is no doubt that whenever a junior is considered for promotion, all seniors even if they had not put in four years of qualifying service, had also to be considered for appointment to Grade IV Class I Service. By this provision, it is ensured that no ad hoc promotee in a particular Department/Ministry steals a march over his seniors only because he was appointed on an ad hoc basis earlier. Obviously, when ad hoc local appointments are made, the seniors within the Department/Ministry or in any other Ministry could not claim a right to be considered. In fact,

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by such ad hoc appointments the rights of the seniors would not be affected so long as regular appointments are made in accordance with the rules. All ad hoc promotions are indeed stop gap and fortuitous and are intended to be for a short duration and are made only to meet an emergent situation and in the exigencies of administration. Such appointments are not intended to affect the rights of anyone else in the service who is eligible to be considered under the rules. In those circumstances, if seniors eligible to be considered did not object and were rightly expecting that they would be considered when regular promotions are made, the mere fact that the ad hoc appointees continued for a long period cannot be allowed to permanently affect the rights of the seniors and block their future chances of appointment. The proviso to Rule 8(1)(a)(ii) makes the intention of the Rule Making Authority very clear that a situation where juniors are considered for appointment and seniors are ignored, cannot be countenanced. Large scale ~~xx~~ ad hoc appointments made and allowed to continue over a long period are clearly not covered under ~~xxxx~~ Rule 8. Consequently, proviso to Rule 8(1)(a)(ii) is not attracted. In making such appointments, the salutary provision contained in the Rule which envisages that when juniors are considered for appointment, seniors should also be considered, is given a go by although

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in fairness, even when ad hoc promotions were made, this principle ought to have been followed. However, that has not been done. However. When the Rule envisages the application of the proviso only to appointments made under the Rules and not when made de hors the Rules, a direction to comply with the proviso and to consider all the seniors for appointment cannot be given; more so, when the Respondents have regularised the ad hoc appointees under the directions of the Supreme Court. This is no doubt resulting in grievous injustice to the seniors who were eligible for consideration even on the date of the ad hoc appointment of their juniors in their respective Departments and perhaps in other Departments as well. But since the appointment of the juniors on an ad hoc basis is itself not under the Rules and in particular not under Rule 8(1)(a)(ii), the proviso thereto would not obviously be attracted. Though it is contended that the Supreme Court had issued the directions in Narender Chandha's case (1) being unaware of the injustice that would be done to many seniors, this Tribunal cannot ignore that judgment and issue any direction which may be at variance with it on any such assumption. On the contrary, in view of what is stated in para 24 of that judgment (extracted above), it is clear that

the Supreme Court was fully alive to the existence of such seniors.

Ms. Shyamla Pappu, learned counsel for the applicants, realising the position that the proviso to Rule 8(1)(a)(ii) would not strictly apply to the case of the applicants, placed strong reliance upon the Next Below Rule enunciated in G.I.F.D. Endorsement No.F.27(1)Ex.1/36 dated the 20th February, 1936, and GIHD No.52/36-Ests dated 6th February, 1936. But it would be seen that the Next Below Rule enunciated in the above cited Government Orders applies only to the members of the same service and not to those who belong to different services. Investigators in the various Departments do not form a single cadre of service. They work in the different Departments/Ministries. The posts in these various Departments/Ministries are, as required by Rule 8(1)(a)(ii), included in a list drawn up by the Controlling Authority in consultation with the UPSC for the purpose of making selections for appointment to Grade IV Class I posts in IES and ISS Services; Investigators by themselves do not constitute a single cadre or service. There is no common cadre of all Investigators working in the various Departments/Ministries. There are no common Recruitment Rules for them. As all the Investigators in the different Departments/Ministries

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do not constitute a single service, the Next Below Rule, in our opinion, does not in terms apply. The Next Below Rule undoubtedly embodies a salutary principle that if a person junior in a particular service is given a benefit without considering his senior, for every junior given the benefit, one senior also should be given the same benefit w.e.f. the date his junior is given. In our view, though strictly speaking, the Investigators in the various Departments/Ministries who are eligible, on putting in four years of service, to be considered for promotion to Grade IV Class I in IES and ISS Service do not constitute a single service as such and the Next Below Rule in terms does not apply, inasmuch as Rule 8(1)(a)(ii) directs that the Controlling Authority shall prepare a list of officers serving in offices under the Department in the economic posts/statistical posts recognised for the purpose of Rule 8(1)(a)(ii) in consultation with the UPSC for the purpose of appointments to Grade IV Class I posts in IES and ISS, they must be deemed to constitute a single service and the principle underlying the Next Below Rule should be given effect to. But once again we find that the directions contained in para 24 of the judgment of the Supreme Court extracted herein above, bar the exercise of this discretion in their favour. Any /to give direction



effect to the principle underlying the proviso to Rule 8(1)(a)(ii) or the Next Below Rule would run counter to the directions contained in para 24 of the Supreme Court Judgement in Narender Chadha's case. We must, however, hasten to add that in all probability, if only the categories of employees, such as the applicants, were represented before the Supreme Court, the Supreme Court would have given appropriate directions to safeguard their interests. But in the situation in which the respondents 1 to 3 were placed, they had no option but to implement the directions of the Supreme Court and prepare the Seniority List accordingly. Though the directions given by the Supreme Court in Narender Chadha's case cannot operate as res judicata against the applicants for they were not parties to it, if this Tribunal were to give any directions in favour of the applicants only because xxx they were not parties to the case before the Supreme Court in Narender Chadha's case and their claim is not barred res judicata, as contended by the applicants' learned counsel, that would disturb the seniority list which has been prepared in compliance with the directions of the Supreme Court. It is not open to this Tribunal to give any directions which may even remotely run counter to the directions of the Supreme Court or disturb the seniority list which

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has been prepared in compliance with the Supreme Court directions. The grievance of the applicants, in our opinion, is very genuine and cannot be brushed aside; but the equities can be adjusted only by appropriate directions of the Supreme Court. It is in this view of the matter that this Tribunal is constrained to reject the applicants' claim.

The applicants also aver that due to ban on promotions and the stay order of the Supreme Court dated 5.4.1982 in CMP 1595/79 the applicants and others similarly placed were not promoted but direct recruitment was made. This has resulted in stagnation among the Investigators. In our view, it could never have been the intention of the Supreme Court in making the order dated 5.4.1982 that while direct recruitment is made according to the rules, selection and appointment of Investigators to Grade IV Class I should not be made against vacancies reserved for them and occurring during that period. That order, in our view, was intended to stop further distortions by irregular appointments against the quota reserved for Investigators before the claim of ad hoc appointees to regularisation and seniority was disposed off. After that Writ Petition was disposed off by the Supreme Court, the Stay Order dated 5.4.1982 made by it no longer operated. When the Respondents had made appointments against the quota reserved for direct recruits during 1981 - 1985, we do not

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see why they should not be directed to prepare a select list in accordance with the Rules for appointment against the vacancies reserved under Rule 8(1)(a)(ii) and arising during this period and upto this date and to make appointments against these vacancies. Shri Bhawani Shankar Kapila, one of the applicants, has filed an affidavit on behalf of the applicants in both the applications that if they are appointed, they are even willing to forego their seniority but all the seniors should be appointed w.e.f. the date their juniors were appointed.

In view of the above discussion, while the applicants' entire claim cannot be allowed, there is no impediment in directing the Respondents to consider the claim of the applicants for appointment against the posts that have been kept vacant in view of the interlocutory order of the Supreme Court dated 5.4.1982. Before doing so the promotees already officiating have to be regulated in accordance with the direction of the Supreme Court. Only vacancies, if any, available after such adjustments have to be filled up as directed herein. Nothing said herein would preclude the Respondents from considering the question of redressing the grievance of the applicants by creating supernumerary posts.

In the result, while the main claim of the applicants must be rejected, the application^{are} is allowed to the limited extent indicated above. There will, however, be no order as to costs.

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(Kaushal Kumar)
Member

K. Madhava Reddy
(K. Madhava Reddy)
Chairman