

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1274
T.A. No.

1987.

DATE OF DECISION January 29, 1990.

Shri V.A. Vasudevraju

Petitioner

Ms. Hemntika Wahi.

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri M.L. Verma

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

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

1. Whether Reporters of local papers may be allowed to see the Judgement?
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 it needs to be circulated to other Benches of the Tribunal? Yes

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O.A. No. 1274 of 198 7
T.A. No.

DATE OF DECISION 29.1.90

Shri V.A. Vasudevraju _____ Applicant (s)

Ms. Hemntika Wahi _____ Advocate for the Applicant (s)

Union of India _____ Versus _____ Respondent (s)

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

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JUDGEMENT

(Judgment of the Bench delivered by
Hon'ble Shri B.C. Mathur, Vice-Chairman)

This application has been filed by Shri V.A. Vasudevraju, Secretary to Government of Mizoram, under Section 19 of the Administrative Tribunals Act, 1985, against the impugned orders dated 11.8.86 passed by the Department of Personnel & Training regarding allotment of seniority in the IAS cadre of the Union Territories to the applicant who was recruited to the I.A.S. by the process of selection.

2. The applicant joined the Government of Pondicherry in 1971 in the post of Project Director, Pilot Research Project in Growth Centres, in the General Central Services Class 1 post in the senior scale of Rs. 700-1250. He was allowed two advance increments as recommended by the U.P.S.C. and his basic pay was fixed at Rs. 780/- in the above scale. He became Director of Planning and Research Department with the status of the Head of Department in 1975 under the Finance and Planning Secretary, Government of Pondicherry. He was also given the ex-officio status of Deputy Secretary by the Government of Pondicherry. As head of the Department, he was incharge of

planning in all aspects. The senior scale of Rs. 700-1250 was revised to Rs. 1100-1600 with effect from 1.1.1973 consequent upon the implementation of the Third Pay Commission's report and he remained in the same scale till 1984 when he was recruited to the IAS as non-State Civil Service officer. The case of the applicant is that although he was appointed to IAS on 7.8.1984, there has been undue delay in finalising the year of allotment and inter-se seniority. After waiting for two years, he made a representation to the Government of India for determining his year of allotment and without giving any consideration to his request, the Central Government allotted 1980 as his year of allotment vide letter dated 26.9.86 in an arbitrary manner.

3. The applicant has pointed out that recruitment to I.A.S. is governed by the Indian Administrative Service (Recruitment) Rules, 1954. Recruitment to the Service is by four methods, namely, by competitive examination, selection of persons from among the Emergency Commissioned Officers and short Service commissioned Officers, promotion from State Civil Service, and fourthly by selection in special cases from among the persons who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service. The applicant was selected in accordance with the method provided for in clause (iv) of the Rules, namely, by selection from non-State Civil Service officers.

4. The seniority of officers appointed to I.A.S. is governed by IAS (Regulation of Seniority) Rules, 1954. Rule 3 of the Seniority Rules relates to the assignment of the year of allotment. Sub-rule 3(b) relates to the manner in which the year of allotment is to be determined in the case of State Civil Service officers appointed by promotion and sub-rule 3(c) deals with the officers appointed by selection from non-State Civil Service. Different methods have been adopted in fixing the seniority of direct recruits, State Civil Service promotees and non-State Civil Service selectees. The State Civil Service is a subordinate feeder service to I.A.S. whereas the non-State Civil Service officers do not belong to any subordinate feeder service. The scales of pay, length of service at higher levels etc. of non-State Civil Service officers who are selected to I.A.S. under Rule 8(2) of the Recruitment Rules of I.A.S. are at a higher level than that of

the State Civil Service officers. In the case of the State Civil Service officers promoted to I.A.S. the year of allotment of the junior most among the direct recruits who has officiated continuously in a senior post from a date earlier than the commencement of such officiation by the officer is fixed as the year of allotment, but in the case of non-State Civil Service officers appointed to IAS neither this method nor any other straight method has been provided. Only such year as may be determined ad hoc by the Central Government on the recommendation of the State Government and in consultation with the Union Public Service Commission shall be the year of allotment.

5. The case of the applicant is that no straight jacket method has been provided in fixing the seniority of non-State Civil Service officers and this is determined on ad hoc basis by the Central Government on the recommendation of the State Government and in consultation with the U.P.S.C. According to him, the selectee officers are persons of outstanding ability and merit, not being members of the State Civil Service but who have held gazetted posts in a substantive capacity for not less than 8 years. They are persons who had held responsible gazetted posts in connection with the affairs of the State comparable in importance and responsibility to the State Civil Service. The selection itself is only in special cases. At first, in the case of non-State Civil Service officers selected to the I.A.S. 'N' formula was followed by the Government of India which is as follows:

$$\text{Year of allotment} = Y - (N1 + N2/2)$$

Where Y = Year in which the officer is appointed to IAS

N = The period of continuous gazetted service after attaining the age of 25 years upto 31st December of the year preceding to the year in which the officer was appointed to IAS.

$N1$ = The period of continuous employment on a pay of not less than Rs. 800/- per month and above (Rs. 900/- per month after 1.4. 1969)

$$N2 = N - N1$$

Provided that only completed years will be taken into account for the purpose of calculating $N1$ and $N2$.



If this formula was applied in his case, his year of allotment should be 1973 to which he could also be given the advantage of two years advance increments and, therefore, two years further seniority. The applicant also states that his case cannot be compared with the State Civil Service officers who were appointed to Class II whereas he was all along appointed to Group 'A' service.

6. The applicant has prayed that since his year of allotment has been determined on ad hoc basis applying the rule applicable to State Civil Service officers, the order fixing his year of allotment is invalid and should be quashed. He has stated that not only he was holding a very responsible post as Head of the Department as Deputy Secretary to the Government of Pondicherry, his pay is also comparable to the senior scale of the I.A.S. He has cited the case of Shri A. Shanmugam of Nagaland who was drawing the pay scale of Rs. 1100-1400 and which was considered high enough to justify the consideration of his service for the purpose of seniority from 2.9.71. In his case 2.9.1971 was considered as the "crucial date" for determining the year of allotment and Shri Shanmugam was assigned 1967 as the year of allotment. The applicant was drawing the scale of Rs. 1100-1600 from 1.1.1973 (pre-revised Rs. 700-1250 from 15.9.71). Neither 15.9.71 nor 1.1.73 was taken as the crucial date for determining his year of allotment. If these dates were considered as "crucial dates", he could have been assigned 1967 or 1969 year of allotment. As his case has been discriminated vis-a-vis the case of Shri Shanmugam, it amounts to violation of Articles 14 and 16 of the Constitution. He has also cited the case of Shri K. Ramachandran of Kerala who was appointed to the I.A.S. by selection in 1982. He was assigned 1975 as the year of allotment by the respondents. In his case, the "crucial date" was 9.9.1979, the date on which Shri Ramachandran started drawing the scale of Rs. 1800-2250 in the post of Housing Commissioner to Government and ex-officio Secretary to Kerala State Housing Board. The Madras Bench of the Tribunal in their judgment dated 30.4.86 (No. 536 of 1986) directed the respondents to consider 19.6.71 as the crucial date since Shri Ramachandran had started drawing the scale of Rs. 1000-1300 as Deputy Chief Engineer which has to be counted for seniority.

(16)

in the IAS and, therefore, his year of allotment was fixed as 1966. The applicant claims that his service in the pay scale of Rs. 1100-1600 from 1.1.73 (pre-revised Rs. 700-1250 from 15.9.71) cannot be ignored for fixing the "crucial date" for determining the year of allotment. According to him, he was recruited directly by the UPSC to Class I Central Service to the post of Director, Research Project in Growth Centres, Government of Pondicherry, and was appointed on 23.8.71 with two advance increments and, therefore, his crucial date has to be taken into account from that date. He has also cited the judgement of the Supreme Court in Civil Appeal No. 3092 of 1985 with Special Leave Petition (Civil) No. 8835 of 1985 and Writ Petition (Civil) No. 1496 of 1986 decided on 7.5.1987, where it has been held that all Class I senior scale posts of Central Services and All India Services are equivalent in regard to duties and responsibilities and as such he claims that taking into account 23.8.71 as the deemed date of appointment, he should be assigned 1965 as the year of allotment with all consequential benefits. Assigning the year of allotment as 1980 by the respondents has placed the applicant below 1980 batch Class I Junior Scale direct recruits of IAS whereas he was selected by UPSC in 1971 for Class I Senior Scale post in the General Central Service and this has caused undue hardship to him. According to the applicant, proviso to Rule 3(3)(c) of the IAS (Regulation of Seniority) Rules, 1984, is not applicable to the applicant as he was recruited to Class I Senior Scale post in 1971 whereas the Pondicherry Civil Service etc. were only Class II Services. As such, no State Civil Service officer in the Union Territories was senior to him in Class I senior posts.

7. The applicant has also claimed that respondents have failed to apply Rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960, which provides for relaxation of Rules and Regulations which cause undue hardship in any particular case while determining the year of allotment and seniority and the applicant has prayed that this Rule should be invoked and the applicant assigned the year of allotment as 1965.

[Signature]

8. The respondents took a preliminary objection regarding limitation. They have cited the case of K.R. Mudgal Vs. R.P. Singh 1987 S.C.C (Lab) 6 1976 S.C. (L & S) 115 where the Supreme Court has held that raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties and that seniority cannot be disturbed after a long lapse of time. The year of allotment of non-State Civil Service officers appointed to IAS by selection is determined ad hoc by the respondents in consultation with the State Government concerned and the U.P.S.C. It was decided that while fixing the year of allotment of a non-S.C.S. officer, various posts held by him prior to his appointment are to be scrutinised and it has to be seen as to which posts held by the officer may be considered as equivalent to the senior scale of IAS from the point of view of duties and responsibilities and also pay scale of the post. The analogy of Rule 3(3)(b) is then applied to work out the year of allotment of a non-State Civil Service officer. Thus, he is assigned the year of allotment of the juniormost direct recruit officer who started officiating on a senior post immediately prior to holding of a post equivalent to senior scale of IAS by the non-State Civil Service officer as the non-SCS officers are normally not posted to IAS Cadre posts prior to their appointment to the IAS by selection unlike the State Service officers who are posted on cadre posts after inclusion of their names in the select list. The respondents state that prior to 1977 'N' formula was in force for determination of the year of allotment of the non-SCS officers, but this was withdrawn in 1977 with the concurrence of the U.P.S.C. Thus any claim of the applicant on the basis of "N" formula is not admissible to the applicant.

9. The respondents have stated that the applicant was appointed to IAS in 1984. Prior to his appointment to the IAS, he was holding the post of Director, Pilot Research Project in the Growth Centre in the pay scale of Rs. 1100-1600 (as revised on 1.1.1973) whereas the scale of pay of the senior scale of IAS on 1.1.1973 was Rs. 1200-2000. The post of Director, Pilot Research Project and the scale of pay of the post was not considered to be equivalent to the senior scale of IAS till his appointment to IAS in 1984. Accordingly, his

year of allotment was correctly fixed as 1980. The same formula has been applied in the case of all the officers who were selected to the I.A.S.

10. We have gone through the pleadings and have given careful consideration to the arguments both written and oral by the learned counsel for the applicant as well as the respondents. During the arguments, the applicant had made a statement that as Director of Planning, Head of Department in the Government of Pondicherry, he had acquired great expertise and persons of similar experience would have joined the Planning Commission as Adviser which is at a much higher scale, but by assigning him 1980 as the year of allotment in the IAS, he has been seriously handicapped. He said that his case is not in any way inferior to the case of Shri Ramachandran or Shri Shanmugham and in view of the clear findings of the Supreme Court that the duties and responsibilities of the Senior Scale Class I officers of Central Service and the All India Services should be considered equivalent, he must get advantage of his Class I service since 1971. It is, however, clear that pay scale in Senior Scale of IAS was higher.

11. We have noted that in the case of non-State Civil Service officers selected to I.A.S. "N" formula was adopted till 1977 and once again by amending IAS (Regulation of Seniority) Amendment Rules, 1989, another formula has been started where for the first 12 years of gazetted service, an officer is given a weightage of 4 years towards fixation of the year of allotment. He would also be given a weightage of one year for every completed 3 years of service beyond the period of 12 years subject to a maximum weightage of 5 years provided that an officer shall not become senior to another non-State Civil Service officer already appointed to the Service and provided further that he shall not be allotted a year earlier than the year of allotment assigned to an officer already appointed to the Service in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, whose length of Class 1 continuous service in the State Civil Service is equal to or more than the length of Class I continuous service of the former in connection with the affairs of the State. This means that the method of assigning any year to a selectee IAS officer between 1977 and 1989 is purely adhoc and which perhaps

is not very helpful to the selectee officers. In any case, we have to go by the relevant rules at a particular time and to see that there is no discrimination in the matter of assignment of years of allotment to officers selected in particular years. It is seen that in the absence of any particular formula, the Central Government in consultation with the UPSC and the State Governments decided to apply the formula under Rule 3(3)(c) as applicable to the State Civil Service officers promoted to the IAS. We have also examined the cases cited by the applicant in his favour. We find that the minimum of the scale of officers was higher than the minimum of the senior scale of the IAS at the relevant times and seeing their actual pay as well as the responsibilities, the crucial dates were fixed accordingly. It is somewhat unfortunate for the applicant that while he has worked in Class I post all along, his scale of pay has always been lower than the senior scale of the IAS, both at the starting and the maximum stages. The argument of the applicant that he had never applied for selection to the IAS is not really relevant as nobody could force him to join the IAS if he was not interested. It is true that he did not know his year of allotment for a period of two years, but we find that while fixing the year of allotment, the respondents have not acted arbitrarily or in a malafide manner and have applied the rule uniformly to all officers selected to IAS in different States through the selection process, applicable to non-State Civil Service officers working in connection with the affairs of the State. While it may be a hard case, we cannot direct the respondents to provide relaxation in favour of the applicant as this is a matter entirely and in the domain of the Government /may have repercussions as seniority fixed long back in a large number of cases may have to be disturbed.

12. In view of the above, we are not inclined to quash the orders fixing the year of allotment of the applicant in the UT Cadre of the IAS as 1980. The application is, therefore, rejected. There will be no orders as to cost.

Banerjee
(B.C. Mathur) 29.1.90
Vice-Chairman

AB 29.1.90
(Amitav Banerji)
Chairman