

Central Administrative Tribunal  
Principal Bench, New Delhi

Regn. No. DA-1582/87

Date: 15-5-89

Shri N.R. Gupta ..... Applicant

Versus

Union of India & Ors. .... Respondents

For the Applicant ..... Shri Rakesh Tikku, Advocate

For the Respondents ..... Shri M.L. Verma, Advocate

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)  
Hon'ble Shri M.M. Mathur, Administrative 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*

(Judgement of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice-Chairman)

The applicant, while working as Divisional Commissioner with the Government of Jammu & Kashmir, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (a) To set aside the orders dated 17.11.1986 (Annexure 14) *or* passed by respondent No.2 and also order dated 6.1.1987 (Annexure A-15) *or* passed by respondent No.1;
- (b) to hold that the applicant stood promoted to the senior scale of I.A.S. w.e.f. 10.7.75 and, therefore, he be placed senior to respondent Nos.3 and 4 in the seniority list; and
- (c) to pass an order directing the respondent Nos.1 and 2 to refix the inter se seniority *on*

between the applicant on the one hand and respondents 3 and 4 on the other in accordance with Sub-rule (3) (b) of Rule 3 of the I.A.S. (Regulation of Seniority) Rules, 1954 by giving to the applicant the benefit of promotion to the senior scale of I.A.S. w.e.f. 10.7.1975:

2. The Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) has been impleaded as respondent No.1. Respondent No.2 is the Government of Jammu & Kashmir through its Secretary, General Department (Services). Respondents 3 and 4 are the colleagues of the applicant in the I.A.S. Cadre.

3. The application was admitted on 9.11.1987 and since then the case had been listed for hearing on as many as ten occasions. At the hearing held on 17.8.1988, Shri M.L. Verma, learned counsel for the respondents, undertook to file the counter-affidavit on behalf of the respondents after receiving the instructions from the State Government. Despite several opportunities given to the respondents, they have chosen not to file any counter-affidavit.

4. We have carefully gone through the records and have heard the learned counsel for the applicant at length. The case of the applicant is that he was appointed to the Indian Administrative Service (I.A.S.) as a direct recruit in 1971 and was allotted the year 1971 as the year of allotment to the I.A.S. Cadre. According to Sub-rule(3)(b) of Rule 3 of the I.A.S. (Regulation of Seniority) Rules, 1954 (hereinafter referred to as the '1954 Rules'), the year of allotment of an officer appointed to the I.A.S.

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by promotion will be the year of allotment of the junior-most direct recruit to the I.A.S. who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the promotee. Thus, in the matter of inter se seniority ~~between~~ the direct recruit and the promotee, the promotee has to figure below such direct recruit in the seniority list of the I.A.S. officers.

5. Under the 1954 Rules, a direct recruit in the I.A.S. is normally to be given senior scale within a period of 4 years from the date of his selection in the I.A.S. Cadre. Thus, the applicant was entitled to be promoted to the senior scale of I.A.S. Cadre from the year 1975. Respondent No.2 did not, however, finalise the matter of promotion of the applicant and other direct recruits within the said period. On 20.8.1983, the respondent No.2 passed the following order whereby the applicant was promoted to the senior scale of the I.A.S. w.e.f. 10.7.1975:-

"In continuation of Government order No. 309-GD of 1977 dated 10.2.1977, Government order No.1289-GD of 1982 dated 29.5.1982 and Government order No.1023-GD of 1982 dated 11.8.1982, sanction is accorded to the officiating promotion of the following officers from junior to senior scale of IAS from the dates they completed four years' service in the junior scale of IAS as shown against each:-

1) Shri N.R. Gupta	10.7.1975
2) Shri Madhav Lal	12.7.1981
3) Shri A.S. Sidhu	13.7.1979
4) Shri S.L. Bhat	22.7.1980."

6. The applicant has stated that respondent Nos.3 and 4, who were members of the State Civil Services, were promoted and appointed to the I.A.S. Cadre of the State of Jammu & Kashmir during the year 1976. In the seniority list of various officers belonging to the

I.A.S. Cadre in the State of J & K, respondents 3 and 4 were shown senior to the applicant.

7. On 15.3.1985, the applicant submitted a representation to respondent No.1 stating that the year of allotment of respondents 3 and 4 was not fixed in accordance with the 1954 Rules. He contended that as he was promoted to the senior scale of I.A.S. w.e.f. 10.7.1975, which was before the appointment of Respondent Nos. 3 and 4, the year of allotment of respondents 3 and 4 should be 1971 and not 1970 and that they should figure below the applicant in the seniority list under Sub-rule (3) of Rule 3 of the 1954 Rules. He requested that the year of allotment of the promotees be refixed under the 1954 Rules.

8. Respondent No.1 forwarded the aforesaid representation to respondent No.2 vide letter dated 7.6.1985. By their letter dated 19th July, 1985, respondent No.1 again requested the respondent No.2 to confirm whether the facts stated by the applicant are correct. They also sought clarification in regard to the circumstances under which the applicant's promotion orders happened to be issued long after the completion of four years' service in the junior time-scale.

9. On 12.3.1986, respondent No.2 wrote to respondent No.1 confirming that the applicant and others were promoted to the senior scale of I.A.S. w.e.f. 10.7.1975. The said letter reads as follows:-

"I am directed to refer you to your letter No.14014/28/85-AIS(I) dated 24th September, 1985 on the subject and to say that vide Government order No.309-GD of 1977 dated 10.2.1977, Shri N.R. Gupta, was promoted to Senior Scale of IAS. Simultaneously Shri Gupta and other IAS Officers represented that they be promoted to Senior Scale of IAS from the date they had completed four years service in the Junior scale of IAS. The

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State Government examined the request of these officers and accordingly vide Government Order No.1280-GD of 1983 dated 20.8.1983 Shri Gupta among others was promoted to Senior Scale of IAS w.e.f. 10.7.1975."

(Vide Annexure A-8, p.26 of the paper-book)

10. The applicant continued to make representation to respondent Nos.1 and 2. On 17.11.1986, respondent No.2 informed respondent No.1 that they had received representations from respondent Nos.3 and 4 and that the State Govt. having considered those representations, recommend not to disturb the seniority position of the officers already determined (vide Annexure A-14, p.32 of the paper-book).

11. On 6th January, 1987, respondent No.1 wrote to respondent No.2 stating that in view of the comments of the State Government contained in their letter dated 17th November, 1986, the Government of India have decided to reject the representation of the applicant (vide Annexure A-15, p.33 of the paper-book).

12. The applicant has contended that the action of respondent No.1 in rejecting his representation in view of the comments of respondent No.2, is illegal, unfair and against the rules and the same is liable to be set aside.

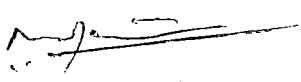
13. We see merit in the contention of the applicant. Under Rule 3(3) (b) of the 1954 Rules, the year of allotment of an officer appointed to I.A.S. Cadre by promotion has to be the year allotted to the junior-most regular direct recruit to the services, who has been holding the senior scale on the date of promotion of an officer promoted from the State Civil Services. Thus, the name of the promotee officer has to figure below such direct recruit in the

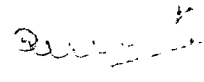
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seniority list of the I.A.S. Officers. The respondents did not fix the seniority of the applicant in accordance with this Rule. Admittedly, the applicant was eligible to be promoted to the senior-scale in 1975. This was, however, not done by respondent No.2 for no fault of the applicant until 1983. The applicant was legally entitled to the senior scale within four years of his having been inducted into the I.A.S. as a direct recruit. Realising this, respondent No.2 gave him promotion with retrospective effect. In view of this, we are of the opinion that the applicant would also be entitled to all consequential benefits with retrospective effect. He would also be entitled to be placed higher in the seniority list as compared to the promotees who were given senior scale subsequent to the notional date from which he was promoted in 1975. As the applicant would be deemed to have been given senior scale w.e.f. 10.7.1975, respondents Nos.3 and 4, who were promoted to the I.A.S. Cadre in 1976, would rank junior to the applicant.

14. In the light of the foregoing, we have no doubt in our mind that this is a fit case in which the inter se seniority between the applicant and respondents 3 and 4 be refixed by giving the applicant the benefit of his promotion to the senior scale of I.A.S. w.e.f. 10.7.1975. The applicant would also be entitled to all consequential benefits.

15. The application is disposed on the above lines. There will be no order as to costs.

  
(M.M. Mathur)  
Administrative Member

  
(P.K. Kartha)  
Vice-Chairman(Judl.)