

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1690
T.A. No.

1987

DATE OF DECISION January 29, 1990.

Shri T.P.Khaund _____ Petitioner

Ms. Hemntika Wahi, _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors _____ Respondents.

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? —
4. Whether it needs to be circulated to other Benches of the Tribunal? —

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Shri T.P. Khaund _____ Applicant (s)

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

Union of India & Ors. _____ Respondent (s)

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

CORAM :

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1. Whether Reporters of local papers may be allowed to see the Judgement ?
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JUDGEMENT

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

This application has been filed under Section 19 of the
Administrative Tribunals Act, 1985 by Shri T.P. Khaund, Secretary
to the Lt. Governor, Arunachal Pradesh seeking relief against the
impugned order No. P. 14014/44/IAS (i) dated 11.8.86 passed by
the Department of Personnel & Training assigning him 1980 as the year
of allotment to the I.A.S. Cadre of Union Territories.

2. The applicant was appointed as Publicity Officer in the erst-
while NEFA Administration in 1962 in the pay scale of Rs. 250-750
and was promoted in March 1966 as Director, Information and Public

Relations, Arunachal Pradesh, in the pay scale of Rs. 750-1200.

In April, 1973, he was appointed Public Relations Officer, North Eastern Council, on deputation in the pay scale of Rs. 1300-1800.

In March 1976, he was appointed Secretary to the Lt. Governor, Arunachal Pradesh, in the pay scale of Rs. 1200-2000. He continued in that post till February 1982 even after the post was included in the cadre of IAS (U.T.). In February 1982, he was appointed on deputation as Project Officer (redesignated as Director) and later as Deputy Secretary (Planning), North Eastern Council, in the pay scale of Rs. 1500-2000. He was considered for recruitment to IAS as a non-State Civil Service Officer and was appointed to the I.A.S. in U.T. Cadre on 7.6.1984. The applicant represented to the Department of Personnel & Training for early fixation of his seniority in May, 1986, and was informed that his year of allotment had been fixed as 1980. He represented on 17.12.86 for allotment of higher seniority on the basis of his past service.

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 juniormost 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. For some time, the Government of India followed the so-called 'N' formula for assigning a year of allotment to non-State Civil Service officers appointed to the I.A.S., but this formula

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was given up in 1977-78. Under this formula, the period of continuous gazetted service and that above the pay scale of Rs. 900.00 according to the applicant p.m. was taken into consideration and if this 'N' formula was applied, be his year of allotment should be 1965.

6. Instead of fixing the seniority of the applicant under Rule 3(3)(c) of the I.A.S. (Regulation of Seniority) Rules, 1964, Government of India vide their order dated 11.8.1986 fixed the seniority of the applicant applying the analogy of Rule 3(3)(b). The applicant has contended that it is not open to Government of India to apply Rule 3(3)(b) to his disadvantage since an independent provision is made for determining the seniority of selectee officers under Rule 3(3)(c). Even while applying the analogy of Rule 3(3)(b), the applicant is entitled to a seniority of the year 1968, but the Government have not given him his just due on the grounds that pay on deputation service would not be taken into consideration and that period has actually not been counted in this case. The impugned orders state that the applicant was on deputation from 2.4.1974 till his appointment to the I.A.S. on 7.6.84 and that the scale of pay admissible to the applicant in his parent department continued to be Rs. 900-1800 with effect from 1.1.1973. According to the applicant, both these facts are incorrect and according to him the correct position is as under:-

<u>Period</u>	<u>Designation</u>	<u>Scale</u>
1962 to March 1966	Publicity Officer/Dy. Director	Rs. 250-700.
April 1973 to March, 1976	Public Relations Officer, North Eastern Council (on deputation)	Rs. 1300-1800
March 1976 till Feb. 1982.	Secretary to Lt. Governor	Rs. 1200-2000
Feb. 1982 to 7.6.1984	Project Officer/Director/Dy. Secretary, North Eastern Council (on deputation).	Rs. 1500-2000

7. The applicant states that the determination of the 'crucial date' being 7.6.84 is erroneous. According to the applicant, the Government of India have erred in holding that the applicant served on deputation from March 1976 till February 1982 when he was serving as Secretary to the Lt. Governor, Arunachal Pradesh. He never applied for the said post but was appointed as Secretary to Lt. Governor under orders of the Government and continued working on the said post even after that post was included in the Cadre of the I.A.S. According to him, he was never on deputation as Secretary to the Lt. Governor.

8. The applicant has pointed out that till his selection to the I.A.S., he always drew a scale not lower than the senior scale of the I.A.S. which was Rs. 1200-2000. Even in 1973, he was drawing pay in the pay scale of Re. 1300-1800. The Government of India in the case of A. Shanmugham of the Nagaland Cadre considered the scale of Rs. 1100-1600 as higher enough as the senior scale of the I.A.S. and if this benefit is granted to the applicant, his year of allotment should be 1969. He further submits that he drew the scale of Rs. 1200-2000 from 1976 to 1982 which was also the senior scale of the I.A.S. The applicant has prayed that his year of allotment should be made 1965 and his seniority refixed accordingly.

9. The respondents in their reply have raised the preliminary objection that the application is barred by limitations both under Sections 20 and 21 of the A.T. Act, 1985. They have stated that the applicant cannot get any advantage of the 'N' formula for determining the seniority of IAS officers selected from non-State Civil Service as this formula was discarded long ago and the seniority has to be determined by the Rules at the time of the recruitment of the officer. At that time, Rule 3(3)(b) of the Seniority Rules would apply for

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fixing the year of allotment of non-State Civil Service officers. The applicant has all along held posts in inferior pay scales than those applicable to Senior Scale of the I.A.S. The scale of pay of the applicant as Director of Information and Public Relations from 1966 to 1973 was Rs. 750-1250 which was revised to Rs. 900-1800 on 1.1.1973. This scale of pay is lower than the scale of pay of Rs. 1200-2000 attached to the senior scale of I.A.S. w.e.f. 1.1.1973. The applicant held various posts w.e.f. 2.4.73 upto his appointment to the I.A.S. on 7.6.1984, on deputation basis. Since the post held by him in his parent Department on substantive basis could not be considered as equivalent to the senior scale of the I.A.S. and also since he would not have been promoted to such an equivalent post in his parent department but for his deputation, no benefit of his holding of senior posts on deputation basis can be given to him for the purpose of application of analogy of Rule 3(3)(b) of the Seniority Rules. The crucial date for applying the analogy of Rule 3(3)(b) of the Seniority Rules would be 7.6.1984. Applying this Rule, therefore, the applicant was assigned 1980 as his year of allotment. It has been stated that the selection of the applicant by the U.P.S.C. for a Group 'A' post is not relevant for the purpose of fixation of his seniority in the I.A.S. The nature of duties and responsibilities of the posts held by the applicant were taken into consideration for determining his year of allotment.

10. The applicant in his rejoinder and through arguments has strongly agitated, that he never applied for any post on deputation and he never made any request in that regard or that he held the post of Secretary to Lt. Governor on deputation,

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contention of the respondents that for the purpose of deciding the year of allotment, the scales of pay of posts held by the applicant on deputation are not taken into account is arbitrary and untenable. This is an alien concept which negates any correct evaluation of the services, experience and performance of the applicant for the purpose of fixation of year of allotment and which is beyond the provisions of the Rules governing the fixation of the year of allotment of a selectee IAS officer under Rule 3(3)(c) of the IAS (Recruitment) Rules, 1954. According to the counsel of the applicant, the classification of service into deputation or otherwise is extraneous to the settled principles relating to fixation of year of allotment of a selectee I.A.S. officer. Till 1977, when the 'N' formula was applied in deciding the year of allotment for Selectee IAS officers, only the total period of gazetted service by the officer was taken into account irrespective of whether he was on deputation or not. Again under the formula evolved in 1989 by the Government of India, no distinction is made between substantive and deputation service. It was pointed out that the order of the respondents that "for the purpose of fixation of seniority on the analogy of Rule 3(b) of the Seniority Rules, we do not take into account on deputation" smacks of arbitrary action. If the rules applicable to promotee officers from the State Civil Service were applied to the non-State Civil Service officers, then there would have been no need to provide Rule 3(3)(c). From March 1976 to February 1982, the applicant worked as Secretary to Lt. Governor of Arunachal Pradesh in the scale of Rs. 1200-2000 p.m. and the last assignment was not on deputation. It was pointed

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out that the wordings of the appointment order do not bear out this fact that the applicant was on deputation. It was also stressed that the applicant worked on deputation from 1973 to 1976 and again from 1982 to 1985 in the exigencies of public service and never on his own initiative and it would be a great injustice if these services are not counted while fixing the year of allotment. It was suggested on behalf of the applicant that the two alternative submissions should be accepted. Since the applicant was in the scale of pay of Rs. 900-1800 p.m. in his substantive post in 1973 drawing a basic pay of Rs. 1100.00 p.m. on 15.3.73 and since he was discharging the duties and responsibilities of Director, Information and Public Relations, which is a senior IAS post in many States, the crucial date for fixation of his seniority should be 1973 and according to this, his year of allotment should be fixed as 1969. This is supported by the judgement of the Madras Bench of the Tribunal dated 13.4.1986 in the case of K. Ramachandran Vs. Union of India where the scale of Rs. 1000-1300 was accepted as high enough for senior scale. Besides, the scale of pay of Rs. 900-1800 p.m. could be considered as equivalent to the I.A.S. Senior Scale (Rs. 1200-2000) for the purpose of fixation of year of allotment in the IAS. In the case of A. Shanmugham of Nagaland Cadre, the Govt. of India considered the pay scale of Rs. 1100-1400 p.m. as high enough for this purpose. The second submission is that even if the pay scales of the posts held by the applicant on deputation could not be considered for the purpose of fixing his year of allotment, the crucial date for deciding his year of allotment cannot be below 1976. The applicant held the post of

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Secretary to Lt. Governor of Arunachal Pradesh in 1976 in the senior scale of IAS and not on deputation and, therefore, his year of allotment can only be depressed to 1972. The applicant pointed out that his year of allotment is sought to be depressed in terms of para 2 of Government of India's circular dated 6.6.78 on the ground that he was earlier considered by IAS Selection Committee in 1980 along with Shri V.P.S. Yadav (Selection: 1977), but he cannot be denied benefits simply because another officer recommended earlier was given lower year of allotment.

11. It was pointed out on behalf of the respondents that the Ministry of Home Affairs in their letter dated 12.2.88 had clarified the position regarding the posts held by the applicant. It was pointed out that the officer was first appointed to a post out of his regular line of promotion in the Information and Public Relations Department of Government of Arunachal Pradesh on 24.3.1976 as Secretary to the then Governor of Arunachal Pradesh. This post was subsequently encadred in the I.A.S. on 8.9.1980 and when the Govt. of Arunachal Pradesh desired to continue the officer in the encadred post, the Ministry of Home Affairs had refused such permission, he being a non-IAS officer. Accordingly, the applicant was relieved from the said post on 10.2.1982. Thereafter the applicant proceeded to the North Eastern Council Secretariat for appointment on deputation w.e.f. 10.2.1982. The maximum period of deputation with the NEC Sectt. is 5 years and, therefore, had he not been appointed to IAS he would have reverted to his parent cadre, namely, the Information and Public Relations Department of the

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Government of Arunachal Pradesh. In the event of such reversion, he would have drawn Rs. 1400/- in the pay scale of Rs. 900-1400. The officer had been appointed to the post of Director of Information and Public Relations with effect from 14.11.1970 and as there is no higher post in the line in the Information & Public Relations Department above the Director, he would have continued to draw increments in the pay scale of Director of Information & Public Relations. The officer had been drawing the pay scale of Secretary to Lt. Governor and even in the NEC Sectt. he opted for the pay scale of the deputation post. The post of Deputy Secretary, North Eastern Council, is not encadred in any State and officers are always sent on deputation to man senior posts in the Council.

12. It has been argued on behalf of the respondents that Secretary to Lt. Governor is a cadre post, but the applicant was not allowed to continue in that post by the competent authority and when he was appointed to the IAS, he was not continuing in that post. The benefit of serving a cadre post is allowed only where such officiation in a cadre post is continuous till the appointment to the I.A.S.

13. We have gone through the pleadings and have carefully considered the arguments on both sides. We appreciate that the applicant was holding senior positions in Arunachal Pradesh as well as in the North Eastern Council and was actually drawing the scale of pay applicable to the senior scale of the IAS right from 1973. It is also noticed that both Shri Ramachandran and Shri Shanmugham who were given higher seniority were actually not in the senior scale of the I.A.S. It was held in their case that they

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were having a higher initial scale. For example, when the Sr. Scale of IAS in 1971 was Rs. 900-1800, Shri Khaund was drawing the scale of Rs. 750-1200 while Shri Ramachandran was in the scale of Rs. 1000-1300 and Shri Shanmugham in the scale of Rs. 1100-1400. It would be noticed that the higher initial scale of Rs. 1000 and Rs. 1100 in the case of Shri Ramachandran and Shri Shanmugham respectively was higher than the initial stage of the Sr. Scale of the I.A.S. which was Rs. 900.00. Shri Ramachandran was working as Deputy Chief Engineer which is a higher post than the substantive post of the applicant and Shri Shanmugham was working as Deputy Secretary to the Government of Nagaland which is a cadre post. It is, however, true that the applicant was drawing a scale equal to the Senior Scale of the IAS as Secretary to Lt. Governor of Arunachal Pradesh and even a higher scale of Rs. 1500-2000 as Director and Deputy Secretary in the North Eastern Council. The question, therefore, revolves round the fact whether the pay on deputation should be taken into consideration for the purpose of fixation of seniority under Rule 3(3)(c) which at the relevant time was same as the Rule 3(3)(b). We notice that it has been the policy of the Government and also accepted by the U.P.S.C. that no advantage should be given to an officer of his salary on deputation and that the basic salary in the parent Department should be the criteria for giving all the advantages where pay is the main criteria. While it is true that the appointment letter appointing the applicant as Secretary to the Lt. Governor does not mention that the post is on deputation, it is not in the line of promotion in the case of the applicant who was working in the

Department of Public Relations where he continued to hold his
lien and certainly had a right to go back to that Department
in case he was not continued as Secretary to Lt. Governor. The
post in the North Eastern Council was on deputation basis.
Officers on deputation are not sent according to their seniority
or by any specific method of selection. In many cases, the senior
most officer may not be sent on deputation and when such an
officer reverts to his parent Department, he cannot get advantage
of the higher salary or seniority in the post on deputation over
and above the other senior persons in his cadre. There may not
be other persons in the cadre of the applicant, but the principle
remains that no advantage can be given of the higher salary on
a deputation basis. The argument that Government should have
given him the advantage of his experience and responsibilities
in a higher post can only be examined by Government and it is not for
us to assess the relative responsibilities and merits of various
posts under the Central Government. It is no doubt unfortunate that
the criteria followed by the Central Government in the matter
of fixation of seniority has been changed from time to time.
For several years, 'N' formula was applied and was dropped and
again in 1989 another formula is being adopted. The Rules
provide that the seniority will be fixed on ad hoc basis. We
also feel that if an officer was considered alongwith others

and not selected, he cannot subsequently get a higher year of allotment than the officers who were selected earlier. In the present case it has been pointed out that Shri Yadav who was selected earlier was given the year of allotment 1977 according to the rules applicable at that time. We hope that Government would lay down specific rules and not change the same from time to time so that fixation of seniority on ad hoc basis as contemplated under the rules, should not continue indefinitely. It would be useful if adhocism is replaced by positive rules. It is, however, not possible for us to apply rules applicable in the case of selectee officers till 1977 i.e. under the "N" formula or those which will have come into force from 1989. In the case of an officer who was selected to the IAS in the year 1984, the seniority has to be fixed according to the rules prevailing at the time of selection and as such, the year of allotment 1980 has been fixed correctly in the case of the applicant. We do feel that the applicant has held responsible senior positions, but we are not in a position to provide him relief as he always held a lower scale of post in his substantive post and he did not officiate continuously in the cadre post till the time of selection to the I.A.S.

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14. In the circumstances, we see no reason to interfere with the impugned orders allotting 1980 as the year of allotment to the applicant in the IAS Cadre of the Union Territories. In the result, the application is rejected. There will be no orders as to cost.

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

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AB
(Amitav Banerji)
Chairman