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In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1147/87

Date of decision:12.2.1993

Shri S.D. Wadhwa

...Petitioner

Versus

Union of India through the
Secretary, Ministry of Home
Affairs, New Delhi & Others

...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri S.C. Gupta, Senior
Counsel with Shri M.K. Gupta,
Counsel.

For the respondents

Mrs. Avnish Ahlawat, Counsel.

Judgement

(By Hon'ble Mr. I.K. Rasgotra, Member (A))

The case of the petitioner is that he was appointed as Lower Division Clerk in Delhi Administration in 1951. He got his promotions in the cadre as and when due. He appeared in the examination conducted by the Delhi Administration for the post of Inspector (Rs.210-425/425-700) in January, 1964. He was declared successful but was not promoted as Inspector. He filed C.W.P. No.552-D/1964 in Delhi High Court in 1964, challenging the action of the respondents in not appointing him as Inspector. The said petition was decided in his favour on 15.10.1970. In the meantime, the petitioner had appeared in the Subordinate Accounts Service Examination and on being declared successful in Part-I in 1968 and Part-II in November, 1969 was appointed as S.A.S. Accountant on ad hoc basis in the pay scale of Rs.270-575 vide order dated 27.11.1969 "in an officiating capacity on emergent basis for a period of one year or till such time the position is reviewed by the Delhi Administration whichever is earlier."

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In a parallel development the Delhi Administration directed the Director of Transport to obtain an option from the petitioner whether he would like to come on to the executive side or would like to continue on the accounts side, as according to the order of the Delhi High Court he was deemed to be appointed in the cadre of Inspector on regular basis w.e.f. 20.3.1964. As a result thereof the petitioner appealed to the Chief Secretary of Delhi Administration and requested that he be allowed presumptive seniority in the executive cadre with proforma promotion as and when they occur and that he be allowed to continue in the post of S.A.S. Accountant Grade Rs.270-575. His request was not accepted and his services were placed at the disposal of Under Secretary (Services) Delhi Administration vide order dated 9.4.1974. The petitioner filed another C.W. No.560 of 1974 and as a consequence of the directions of Delhi High Court was re-appointed as S.A.S. Accountant in the scale of Rs.500-900 on purely emergent and ad hoc basis with immediate effect or with effect from the date he takes over the charge of the post of S.A.S. Accountant till further orders vide order dated 20.12.1977. He was promoted as Accounts Officer on ad hoc and emergent basis in the scale of Rs.840-1200 with immediate effect vide order dated 29.3.1978. The said order further stipulated that "the above appointments are purely on ad hoc basis and will not give the officers concerned any benefit for the purpose of seniority or claim for regular appointment to this or any other equivalent post." The appointment as Accounts Officer was made on the basis of the recommendations of the Departmental Promotion Committee (DPC). At this stage, the Delhi Administration promulgated Delhi Administration Accounts Rules 1982 vide notification dated 15.2.1982. Service/(hereinafter referred to as 1982 Rules)/ The petitioner was appointed as S.A.S. Accountant/Junior Accounts Officer

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(Grade-II) in the scale of pay of Rs.500-900 under Rule 5(2)(a) of 1982 Rules at the initial constitution of the service on regular basis w.e.f. 15.2.1982. The seniority of the persons appointed at the time of initial constitution of service was to be regulated under Rule-5 of 1982 Rules and was to be determined with reference to the date of passing the S.A.S. Examination (Batchwise). The order dated 22.4.1982, according to which the petitioner was appointed along with others as S.A.S. Accountant on regular basis gives the seniority batch-wise. The petitioner is placed at serial No.3 in the second batch of S.A.S. Accountants for the purpose of seniority. The relevant portion of the seniority as given in order dated 22nd April, 1982 is extracted below:-

Sl. No.	Name of the officer with date of birth.	Grade and date of apptt. in that grade prior to passing SAS examination (a) (b)	Date of initial apptt. as SAS Acctt. after passing SAS examination	Deptt. where working at present.
<u>2nd Batch</u>				
5.	Sh.N.P.Sahni (18.6.31)	Gr.II 2.4.60	1.12.69	Food & Suppl.
6.	Shri B.S.Gaur (1.10.29)	-do- 21.7.63	17.12.69	Sales Tax.
7.	Sh.S.D. Wadhwa (25.3.34)	GDE.II (E) 19.3.64	22.12.77	Sales Tax.
8.	Sh.J.P.Chadha (27.11.28)	GDEII (M) 5.6.66	18.11.69	Dte.of Education
9.	Sh.Y.L.Arora (11.11.31)	-do- 7.11.66	18.11.69	-do-
10.	Sh. Parsu Mal (20.1.30)	-do- 9.2.67	18.11.69	-do-

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It is observed from the above that the petitioner is shown as belonging to Grade-II (Executive) who had passed the examination for the post of Inspector in 1964, while his date of initial appointment after passing S.A.S. examination is shown as 22.12.1977.

2. The dispute in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 is focussed on the seniority assigned to the petitioner as S.A.S. Accountant indicating his having passed the S.A.S. examination in 1977 and its effect, if any, on his promotion to the higher grade. On 20.4.1983 the 1982 Rules were amended to constitute Delhi Administration Accounts Service Grade-I. Rule-6 dealing with the initial constitution of the service provides:-

"6. Initial Constitution of Service:

1. 75 per cent of the vacancies on duty posts of the service at the initial constitution shall be filled in the following manner:-

2. The Commission shall constitute a selection committee with a Chairman or Member of the Commission as Chairman and not more than two representatives of appropriate status to be nominated by the Chief Secretary as Members. The Selection Committee shall

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determine the suitability of the departmental candidate holding on regular basis duty posts included in the service and prepare a list containing names of officers, arranged in order of preferences, according to the length of their regular service, considered suitable for appointment of the service at its initial constitution. These officers shall be placed senior to those selected in the manner specified in sub-rule 3 below;

3. For making appointments against the remaining vacancies, if any, in the service at its initial constitution, Selection Committee constituted under sub-rule (2) above shall hold selection for determining the suitability of candidates holding posts in the Delhi Administration Accounts Service (Grade-II) who have put in a minimum of five years' regular service in the grade. The service, if any rendered in the Grade-II of the Accounts Service or in a higher post after passing the S.A.S. Examination, by such officer shall also be taken into account for the purpose of reckoning the above qualifying service of five years. The Committee shall prepare a list in the order of merit, of candidates considered suitable for appointment to the service at its initial constitution such officers shall be placed enbloc junior to those selected under sub-rule (2).

4. The Selection Committee shall submit to the Commission, Select List prepared vide sub-rule (2) and (3) above. On receipt of the said Select Lists the Commission shall forward its recommendations for appointment of officers to the service to the Controlling Authority."

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Rule-8 deals with the seniorty and makes the follwing stipulations:-

"(8) Seniority:

1. The seniority of officers who are appointed to the Service at the initial constitution shall be determined in the order in which they are selected for appointment by the selection Committee referred to in rule 6 and approved by the Commission.
2. The seniority of persons recruited to the Service after the initial constitution shall be determined in accordance with the general instructions issued by the Central Government in the matter from time to time.
3. The seniority of persons appointed to the Service in accordance with sub-rule (4) of Rule (4) shall be fixed in the manner prescribed therein.
4. In cases not covered by the above provision, seniority shall be determined by the Administration in consultation with the Commission."

The petitioner was considered for appointment as Accounts Officer on regular basis in Grade-I of the Delhi Administration Accounts Service in accordance with sub rule 3 of Rule 6 of 1983 rules. He was appointed on the recommendations of the selection committee and with the prior approval of the UPSC as Accounts Officer (Rs.840-1200) on a regular basis. However, in the order of merit he was relegated to serial No.20 whereas the person above him Shri B.S. Gaur and the person below him Shri J.P. Chadha in the seniority list of S.A.S. Accountants have been placed at serial Nos. 3 and 4. In the batchwise seniority of S.A.S. Accountants Grade-II in the scale of pay of Rs.500-900 Shri B.S. Gaur was at srl. No.6, petitioner at No.7 and Shri Chadha at serial No.8. It is his apprehension that the date of

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passing of S.A.S. examination in his case appears to have been taken as 2.12.1977 as indicated in the order dated 22.4.1982 instead of 1969 which actually is the case. Shri S.C. Gupta, learned senior counsel for the petitioner fairly conceded that this is the only grievance of the petitioner and he would be satisfied if the Tribunal calls for the records of the proceedings of Selection Committee for perusal with a view to ensure that justice is done and that the petitioner has not been relegated to a lower position by taking his seniority in Grade-II Accounts service as 1977 since he had passed S.A.S. examination in the year 1969 and was appointed as S.A.S. Accountant in the same year. The learned counsel for the respondents Mrs. Avnish Ahlawat referring to paragraph-6(q) of the counter-affidavit submitted that the petitioner has been rightly placed at serial No.20 of the merit list as recommended by the U.P.S.C. and that there was no other reason for his being relegated to a lower position. Nonetheless, Mrs. Avnish Ahlawat, learned counsel for the respondents offered to submit the relevant record containing the proceedings of the selection committee constituted for appointment to Grade-I of the Accounts Service in accordance with 1983 Rules.

3. We have perused the minutes of the selection committee which comprised a Member of the UPSC and Secretary (Finance) Delhi Administration. The Committee considered 25 eligible officers for appointment as Accounts Officer Grade-I at the initial constitution of service in accordance with Rule-6 (3) of the 1983 Rules, as listed in the minutes. The name of the petitioner among the eligible officers appears at srl. No.5 between Shri B.S. Gaur and Shri J.P. Chadha. Thus indication of year 1977 as the year of passing S.A.S. examination has had apparently no role in the preparation of the select list. The petitioner has been relegated to a lower position in the Select

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List for appointment as Grade-I Accounts Officer purely on account of the merit as assessed by the selection committee presided over by a member of the UPSC. The proceedings of the Selection Committee do not substantiate any of the apprehensions expressed by the learned counsel for the petitioner. The petitioner has been assessed as 'good' and, therefore, he has lost seniority in the order of merit to those persons who were assessed as 'very good'. The petitioner has been placed below 'very good' in accordance with the relevant rules.

4. In view of the above circumstances the petitioner cannot make any grievance as his relegation is on account of the assessment of his records of service by the Selection Committee and not for any other reason.

5. In view of the above, there is no case for our interference in the matter. The O.A. is, accordingly dismissed. No costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)
12-2-93

'San'

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN
12-2-93