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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2305 of 1990

New Delhi this the 3rd day of December 1994

Hon'ble Mr. J.P. Sharma, Member(J)
Hon'ble Mr. S.R. Adige, Member (A)

Shri K.V. Bansal S/o Shri Rishi Ram
R/o H-41/B, SFS Flats, Saket
New Delhi-110 017 working as
Addl. Economic Adviser
Ministry of Textiles
Udyog Bhawan
New Delhi

....Applicant

(Through Sh. N. Prakash, Advocate)

Versus

1. Union of India
Through The Secretary
Ministry of Finance
Department of Economic Affairs
North Block
New Delhi-110 001.

2. The Secretary
Department of Personnel & Training
North Block, New Delhi-1

....Respondents

(through Shri V.S.R. Krishna, Advocate)

JUDGEMENT (Oral)

Hon'ble Mr. J.P. Sharma, Member(J)

The applicant who was working as Additional Economic Adviser in the Ministry of Textiles in the Grade-I of the Indian Economic Service assailed grievance of non-grant of Non-Functional Selection Grade (NFSG) w.e.f. 17.12.84 and in the alternative w.e.f 1.11.85 or 31.12.85 i.e. the date when post of NFSG fell vacant because of Shri R.L. Pitale being appointed in the grade of Rs. 2500-2750.

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2. The applicant made a representation for the grant of NFSG as stated above but the same was not accepted and by the order dated 13th July 1990, the representation was rejected.

3. The applicant filed this application in November 1990 and challenged the order of rejection of his representation praying for grant of relief that the aforesaid order be quashed and he should be granted NFSG before 1.1.86 or 17.12.84 or from 1.11.85 or from 31.12.85 with consequential benefits.

4. The respondents in reply opposed the grant of relief on the ground that the applicant was considered but he could not be granted NFSG because on 17.12.84 he was not holding a cadre post while the proviso 2 of Rule A(e) of IES Rule 1961 allowed NFSG only to those officers who are holding Functional Selection Grade post in the cadre for holding grade-I post subject to the conditions that the total number of officers drawing pay in the scale of pay attached to the selection grade is within the strength of the selection grade fixed under sub-rule 3 of Rule 5 of the Rules. As regards non-grant of selection grade w.e.f. 31st October 85, the respondents have stated that 4 officers who are senior to the applicant as per seniority list issued in 1984 were granted NFSG and therefore NFSG could not have been granted to the applicant before it was granted to the persons mentioned above. Similarly, he could not be granted NFSG w.e.f. 31.12.85 as on the above date, there were 2 persons in the seniority list. We heard Shri V.S.R.Krishna for the respondent. As counsel for the applicant Shri Gyan Prakash is not present. However, counsel for the respondents conveyed information given to him by Shri Gyan Prakash that court be informed to decide the matter on the basis of pleadings on record. In view of this and accepting the statement of counsel for respondents, we propose to decide the application on merits on the basis of pleadings including annexures on record.

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5. The applicant joined Indian Economic Service (IES) Grade-IV in 1964. He was promoted to Grade-III, then to Grade-II, and last to Grade-I w.e.f. March 1963, February 1975 and October 1980 respectively. He was also granted NSFG of IES w.e.f. 1.11.86. Rule 5 (3) relates to NSFG and lays down that this will be in the scale of 2000-2500 and the strength of such selection grade salary is fixed at 20% of the combined total strength of Grade-I & II as obtaining from time to time, subject to conditions that it shall not exceed 50% of the total strength of grade-I as obtaining at the relevant time. It further provided that if any time, the aggregate number of officers appointed in NFSG in service and the number of officers appointed to functional cadre post in the same scale of pay as that of NFSG shall not exceed the strength of the selection grade fixed under the rules. Further Rule 8(e) governs grant of selection grade and lays down that all the vacancies of selection grade shall be filled by appointment ^{of} to grade-I officers who have rendered ^{not} less than five years service in that grade and such appointments shall be made on the basis of merit with due regard to seniority by the controlling authority on the advice of the Board. It also provided that if an officer in grade-I is eligible and considered for appointment to the selection grade, all officers senior to him in that grade shall also be considered for such appointment, notwithstanding that they may not have rendered five years of service in Grade I at that time.

6. The case of the applicant is that he was given promotion to Grade-II of IES w.e.f. 31.10.80. Thus, he completed 5 years as Grade-I officer on 30.10.85 and was eligible for appointment in non-functional selection grade (NFSG) from 31.10.1985 in accordance with Rule 8 of the IES Service Rules.

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7. The applicant has also given strength of the Grade-I & II posts as 87 and 20% strength of the selection grade comes to 17.4 posts. Thus, according to the applicant, 18 posts should have been filled in NSFG and in any case 17 posts have to be filled if he ignores the decimal point. The next contention of the applicant is Sl.No.58 in the seniority list of 1980 and the seniority list of 1984 at sl.No. 40. He further stated that one Dr. J.N.Mongia has been junior to the applicant in grade-I and the case of the applicant should have been considered for NFSG if any juniors are appointed to the Selection Grade. The applicant should, therefore, have been appointed w.e.f. 17.12.84. The stand of the respondents is in accordance with the Rule 8 (e) of IES that the applicant was working as Financial Analyst in the Ministry of Works & Housing in the grade of Rs. 2000-2500 on 17.12.84. Since it was an ex-cadre post, the applicant could not have been granted the benefit under Rule 9 of IES Rules.

8. In the seniority list of 1984 (Annexure A-7), 4 officers at Sl.No. 36-39 were senior to the applicant and in view of this the applicant could not be granted NFSG w.e.f. 31.10.85. The applicant came in the zone of consideration in Nov. 1985 for grant of NFSG but since 4 officers were senior to the applicant, though they had not put in the requisite number of service in Grade-I, however, they had to be given the benefit of NFSG and they were promoted. The applicant, therefore, could not be adjusted alongwith those officers for grant of NFSG.

9. Regarding the grievance of the applicant that since R.L.Pitale was appointed as Assessor in Grade-IV w.e.f. 30.12.85. He should have been granted NFSG from that date ^{but the} because order of Shri Pitale was issued on 20.3.86. In view of the facts, the applicant was granted NFSG w.e.f. 1.3.86, however, on acceptance of the 4th Pay Commission's report, the applicant was granted the same w.e.f. 1.1.86. There was another development in the meantime that Shri N.G. Goel & Shri R.P.Sinha were appointed to Grade I in May 1984, as direct recruits and were placed

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above the applicant which was reflected in the subsequent seniority list issued by the department. The applicant never challenged that seniority list. The applicant, therefore, could not be granted NSFG w.e.f. 31.12.85.

10. We have considered the above facts and circumstances and ^{ourselves} find that the applicant did not entitle to grant of NSFG. The respondents have followed the rules taking into account the strength which had not exceeded by 20% of the total strength of Grade-I and Grade-II of the posts and should not go beyond 50% in any ^{Case No. 4} case.

11. In view of the above facts and circumstances, the application therefore, is dismissed, devoid of merits, leaving the parties to bear their own costs.

S. R. Adige
(S. R. ADIGE)
MEMBER(A)

J. P. Sharma
(J. P. SHARMA)
MEMBER(J)