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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

P R E S E N T

The Hon'ble Shri K. Muthukumar, Administrative Member
and
The Hon'ble Shri P. Suryaprakasam, Judicial Member

Dt 2/7/1996

O.A. No.2530 of 1990

Ms. Janak Juneja .. Applicant

vs.

1. Union of India rep. by
Secretary to the Govt. of India,
Ministry of Home Affairs,
NEW DELHI.
 2. The Director (U.T.)
Ministry of Home Affairs,
S.O.I.,
NEW DELHI.
 3. Ministry of Personnel & Training,
Govt. of India,
New Delhi.
 4. Govt. of National Capital
Territory of Delhi through
Lt. Governor through
Secretary (Services),
Delhi.
- .. Respondents

Mrs. Avnish Ahlawat .. Counsel for Applicant

Mr. V.S.R. Krishna .. Counsel for Respondents

O R D E R

(Pronounced by the Hon'ble Shri P. Suryaprakasam, Judicial Member)

The applicant who joined the Delhi, Andaman & Nicobar Civil Services Cadre w.e.f. 1.6.1964 was appointed to the I.A.S. Cadre by promotion on 9.10.1984. The applicant is presently posted as Deputy Secretary, Department of Agriculture and Cooperation, Krishi Bhavan, New Delhi.

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2. According to the applicant a select list was prepared in December, 1981 for promotion to the I.A.S. Cadre (U.T.) and the applicant's name found a place in the select list. Later by a letter dated 23.12.1981 the applicant was posted as Joint Secretary (Land & Building) Delhi Administration which according to the applicant is a cadre post of the I.A.S. and the said letter is annexed to the application and is marked Annexure A. The applicant took charge of the said post on 1.1.1982. Although the applicant was appointed to the cadre post of I.A.S. with effect from 1.1.1982 later by an order dated 14.9.1986, the applicant's cadre officiation was approved only for the period 1.4.1983 to 8.10.1984. The period relating to 1.1.1982 the date on which the applicant was appointed to the cadre post till 31.3.1983 has not been accounted for and the said period has not been taken into account for the purpose of officiation in the cadre post and the applicant now questions the same in the present application.

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3. According to the applicant since her name has been found in the select list as early as December, 1981 and that she was appointed to the cadre post with effect from 1.1.1982 in which post she was officiating continuously upto 8.10.1984 the period from 1.1.1982 to 31.3.1983 ought to have been taken into account for the purpose of fixing up her year of allotment. Since it has not been done so when she was conferred I.A.S. her year of allotment has been fixed as 1979. The applicant submitted that had the period from 1.1.1982 to 31.3.1983 which period she was holding the cadre post, been taken into account she would have been allotted the year of allotment as 1977 instead of 1979 which resulted in the juniors being promoted to the various posts and also caused financial loss to the applicant. The applicant also relied on the principles laid down in G.N. Tiwari 's case and stated that the said principle ought to have been applied in her case also and submitted further that had it been applied her year of allotment would have been fixed at 1977 and therefore,

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the applicant prays for the following reliefs:-

1. To treat the officiating period w.e.f. 1.1.82 to 31.3.83 to the I.A.S. Cadre Post.
2. To implement the judgment of the Supreme Court reported in AIR 1986 S.C. 307.
3. To direct the respondents that after considering officiating period from 1.1.1982 to 31.3.1983 the applicant be allotted 1977 as year of allotment as Direct recruitment batch of 1977 were promoted to Sr. Scale in 1981 and the direct recruit of I.A.S. 1978 were promoted to Sr. Scales in February 1982.
4. To direct the respondents that after allotting the year 1977 as year of allotment to place the applicant at the appropriate seniority position and all consequential benefits.

4. The applicant submitted that as per Rule 3(3)

(b) of the I.A.S. Service(Regulation of Seniority) Rules 1954 the entire period of continuous officiation ie. from 1.1.1982 to 31.3.1983 has to be taken into account while fixing up seniority of the applicant when she was appointed to service by promotion in accordance with sub rule (1) of Rule 8 of I.A.S. Recruitment Rules. According to the applicant the Hon'ble Supreme Court in the case of Union of India vs. G.N. Tiwari & others (AIR 1986 SC 348) has held that explanation under Rule 8(1) provides that an official shall be deemed to have officiated continuously on a senior post from a certain date if during that period

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from the date to the date of his confirmation in the senior post he continued to hold the post without any break or reservation. Therefore, the respondents had not corrected the year of allotment of the applicant inspite of the judgment rendered by the Supreme Court in the above said case.

In fact the applicant had made representation to the authorities in this regard and the same was rejected as early as in 1988. The applicant again made another representation on the 4th of May, 1990 but yet no reply has been received by the applicant till this date.

5. The respondents have filed a detailed reply statement and have submitted that the judgment that has been rendered in G.N. Tiwari's case (supra) is a judgment in personam and not judgment in rem and therefore, it could not be applied universally and especially to the applicant unless or otherwise she happens to be a party in the said case or in any other case.

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6. The respondents further submitted that the year of allotment relates to the seniority and in fact the applicant's year of allotment was decided as early as in October, 1984 against which a representation was made by the applicant which was also rejected as early as May, 1988. As against the same citing the Supreme Court judgment the applicant is trying to reopen the issue which was totally belated which will ^wcase much hardship to many of his seniors as well as to the department and in fact it will affect the smoothness and efficiency of service. In respect of the same the respondents have submitted the following cases:-

1. K.R. Mudgal vs. R.P. Singh(1987(1) ATLT(SC)129
2. P.S. Sadashiv Swamy vs. State of Tamilnadu (AIR 1974 SC 2271)
3. S.S. Rathod vs. Union of India (AIR 1990 SC 10)
5. Thema vs. D.R.M. S.Rly (1987 (4) ATC (Bang) 328
- . L.K. Pathak vs. Union of India (1988(6) ATC (Jab)205

7. The respondents submitted that the appointment that has been effected with regard to the applicant with effect from 1.1.1982 was done by the Delhi Administration under local arrangement even before her inclusion in the select list for promotion to the I.A.S. Actually, she

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was for the first time included in the select list on 8.1.82. The Ministry of Home Affairs as Cadre Controlling Authority in respect of I.A.S. of erstwhile U.T. Cadre had conveyed approval to appoint the applicant on an I.A.S. Cadre post on officiating basis with effect from 1.4.1983. Therefore, the claim of the applicant now that she is holding the cadre post from 1.1.1982 in pursuance of her inclusion in the select list is not correct. Further the respondents submitted that the said post was given to the applicant only as a local arrangement and not with the approval of the Ministry of Home Affairs which was the cadre and controlling authority in respect of the erstwhile U.T. Cadre. Since the Ministry of Home Affairs conveyed approval for appointment of the applicant to IAS Cadre post only with effect from 1.4.1983 and that date has been taken into account for the purpose of allotting the year of allotment in the case of the applicant. Therefore, the application is liable to be rejected.

7. The applicant is fully relying on the principle laid down in the judgment rendered by the Hon'ble Supreme Court in G.N. Tiwari vs. Union of India (supra). In that case it has been held that the respondents therein should not be deprived of the benefit of continuous officiation of their temporary appointment to the cadre post of Collector by the State Government under Rule 9 of the Cadre Rules and consequently under Rule 3(3)(b) of the Seniority Rules for the purpose of year of allotment. The relevant portion of the judgment reads as follows:-

"8. The assignment of the year of allotment is governed by R.3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. The relevant clause applicable to the respondents is that contained in R.3(3)(b) which reads as follows:

"3(3). The year of allotment of an officer appointed to the Service after the commencement of these rules shall be --

a) --

b) Where the officer is appointed to the Service by promotion in accordance with sub rule(1) of rule 8 of the Recruitment Rules, the year of allotment of the junior most among the officers recruited to the Service in accordance with rule 7 of these rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former:

Provided that the year of allotment of an officer appointed to the Service in accordance with sub-rule(1) of rule 8 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officer recruited to the Service in accordance with rule 7 of these Rules so started officiating, shall be determined ad hoc by the Central Government in consultation with the State Government concerned:

Explanation 1: In respect of an officer appointed to the Service by promotion in accordance with sub rule (1) of rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purpose of determination of his seniority, count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later:

Explanation 2 -- An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement."

The said senior post of Collector in the above case was

made in accordance with Rule 9 of the Indian Adminis-

trative Service (Cadre) Rules, 1954. It is in as it stood then.

these terms:-

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"9. Temporary appointment of non-cadre officers to cadre posts-

i) A cadre post in a State may be filled by a person who is not a cadre officer if the State Government is satisfied -

(a) that the vacancy is not likely to last for more than three months or

(b) that there is no suitable cadre officer available for filling the vacancy.

(2) Where in any State a person other than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.

(3) On receipt of a report under sub-rule(2) or otherwise, the State Government shall terminate the appointment of such person and appoint thereto a cadre officer and where any direction is so issued, the State Government shall accordingly give effect thereto.

4) Where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable direction to the State Government concerned."

On the above basis the Supreme Court held that the respondents in that case as non cadre officers could not be denied the benefit of continuous officiation in a senior post

merely because the State deputation Reserve Quota was over

utilised.

8. The present case could not be covered under the principle laid down in the above said case (G.N. Tiwari vs. Union of India). In that case it was an undisputed fact that the respondents therein were appointed under Rule 9 of the Cadre Rules. But in the present case the very fact of the applicant's appointment under Rule 9 is disputed. In fact, a mere perusal of the appointment order

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posting the applicant to the cadre post with effect from 1.1.1982, dated 23.12.1981 will clearly show that it has not been made under Rule 9 of the Cadre Rules 1954. The order reads as follows:-

DELHI ADMINISTRATION DELHI
(SERVICES I DEPARTMENT)

Dated 23rd Dec. 1981.

ORDER

The Administrator, Delhi is pleased to place the services of Shri Ashok Kumar, (IAS-UT) at the disposal of DSIDC for appointment as General Manager vice Shri T.R. Kalia, transferred.

The Administrator, Delhi is further pleased to order the transfers and postings of the following IAS/DANICS officers with immediate effect, as under:-

- 1.
- 2.
- 3.
4. Km. Janak Juneja (DANICS) On repatriation Joint Vice Sh. Bansi from Delhi State Secretary Dhar trans- Civil Supplies (Land & ferred Corporation Building) "

In this a copy of the said order has been endorsed to the Ministry of Home Affairs as well as to the Department of

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of Personnel and Administrative Reforms. The applicant considers this as an appointment to the cadre post made under Rule 9 and as such the services rendered by her in the cadre post from 1.1.1982 ought to have been taken into account for the purpose of allotting the year of allotment under Rule 3(3)(b). Annexure 'A', the Appointment Order which has been issued on 23.12.1981 was prior to the applicant's name found a place in the select list. According to the reply the applicant's name found a place in the select list only on 8.1.1982. Therefore, this appointment made effective from 1.1.1982 could not be considered under the rules ^{as} with an appointment made under Rule 9 of the Cadre Rules. The applicant submitted that since this appointment was allowed to continue even beyond 1983 and only from a later date the Government conveyed its approval for appointment of the applicant to the I.A.S. Cadre with effect from 1.4.1983, it is wrong on the part of the Government not to have considered her continuous officiation from 1.1.1982. The Hon'ble Supreme Court in Syed Khalid Rizvi vs. Union of India (1994) 26 ATC 192) has held as follows:-

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"Due to exigencies of the service, the State Government has been empowered under Regulation 8 of Promotion Regulations read with Rule 9 of Cadre Rules to appoint select-list or non select officers to man temporary vacancies in cadre posts. Where the vacancy/vacancies continue for more than three months, the prior concurrence of the Central Government is mandatory. If it continues for more than six months prior approval of the Union Public Service Commission is also mandatory. Any appointment in violation thereof is not an appointment in accordance with the law. The appointments are mere ad hoc or local arrangement or fortuitous."

In the present case neither the appointment has been made according to the rules for the applicant's name had not been included in the select list when she was appointed on 23.12.1981 nor there is proof to show that prior concurrence of the Central Government has been obtained in the case of the applicant either for the appointment or for continuation. Therefore, the year of allotment that has been allotted by the Government in the case of the applicant is in order.

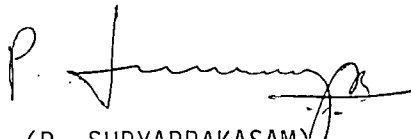
9. In view of the foregoing the application is dismissed. Since we are dismissing the application on merits, we find it not necessary to give any ruling with

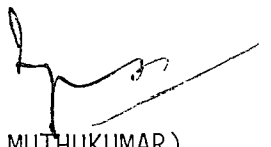
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regard to the other contentions viz. the application is belated or that necessary parties have not been impleaded in the case etc.

10. There will be no order as to costs.


(P. SURYAPRAKASAM)
MEMBER(J)


(K. MUTHUKUMAR)
MEMBER(A)

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