

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2562/90

New Delhi this the 13th day of July, 1995.

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

R.T.L.D. 'Souza,
R/o A-2, Central Jail, Tihar,
New Delhi.

..Applicant.

By Advocate Shri H.C. Sukhija along with the applicant
in person.

Versus

1. Unin of India through
The Director (CPS),
Ministry of Home Affairs,
Government of India,
New Delhi.
2. Delhi Administration, through
The Chief Secretary,
5, Sham Nath Marg,
New Delhi.
3. Lt. Governor,
Union Territory of Delhi,
Raj Niwas,
Delhi.
4. U.P.S.C. through its
Chairman,
Dholpur House,
Shahjahan Road,
New Delhi.

..Respondents.

By Advocate Shri N.S. Mehta, Sr. Standing Counsel, for
Respondent No. 1.

By Advocate Shri S.K. Sinha proxy for Shri Jog Singh,
Counsel, for Respondents 2 to 4.

ORDER (ORAL)

Hon'ble Shri N.V. Krishnan.

This is an application by an officer of the
Delhi Administration Subordinate Service claiming
fixation of seniority in the Delhi and Andaman and Nicobar
Islands Civil Service - DANICS for short - w.e.f.
25.10.1984 and for a direction to the respondents to
consider him for promotion to the Junior Administrative
Grade of the DANICS as he has completed five years of

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service in the selection grade.

2. Respondent No.1 and Respondents 2 and 3 have filed their separate replies opposing the application.

3. When the matter came up for hearing on 11.7.1995, the learned counsel for the applicant sought permission for the applicant to be heard. Accordingly, the applicant was heard on 11.7.1995 and 12.7.1995. Shri H.C. Sukhija, the learned counsel for the applicant, Shri N.S. Mehta, the learned Sr. Standing Counsel for Respondent No. 1 and Shri S.K. Sinha, proxy for Shri Jog Singh, the learned counsel for Respondent No. 2, have also been heard by us.

4. The relief sought is reproduced below:

- (1) Fixation of seniority with effect from 25.10.1984 in the pay scale of Rs.1200-1600 (old scale) plus Rs.150/- Spl. pay.
- (2) To be considered for promotion to Junior Administrative Grade of DANI Civil Service having completed 5 years in the selection grade from 25.10.1984 onwards or in an equivalent post.
- (3) Consequential relief of financial benefits and proper posting at a proper position.

AND

ALTERNATIVE

Fixation of seniority right from the date of appointment in the proper service in the scale of Rs.650-1200 (old scale) equal to Rs.2000-3500 (Revised scale) on account of recruitment through the UPSC and on account of being successful candidate of the Indian Administrative Service Examination 1976 held by the UPSC in the year 1976 at a time when the corresponding number

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of vacancies or more number of vacancies were also available with the respondent and consequential benefits and posting in correct position should be done by the respondent.

5. The alternative relief sought is barred by limitation as it concerns clarification about the appointment in 1976 and the seniority in service after his appointment. If the applicant had any grievance in this behalf, he should have resorted to legal remedies long back. As the cause of action arose prior to 1.11.1982 (i.e. prior to ¹²these years from the date the Administrative Tribunals Act came into force), it is beyond our jurisdiction.

6. In regard to the main reliefs, it is clarified that this pertains to the DANI Civil Service. In the very nature of the reliefs, the first prerequisite which has to be established is that the applicant has been regularly appointed to the DANICS. In this regard, we notice that the Delhi and Andaman and Nicobar Islands Civil Service Rules, 1971 have been issued under the proviso of Article 309 of the Constitution of India to regulate the recruitment to the above service. The methods of recruitment are mentioned in Rule-5. Regular recruitment is covered in Part V of the Rules under the heading "Recruitment by Selection". Rule 13 mentions the constitution of the Selection Committee. Rule 14 specifies the conditions of eligibility and procedure for selection and preparation of select list. Rule 15 provides for consultation with the UPSC and finalisation of select list. Rule 16 is important. It deals with the appointment to the service. In other words, when an appointment to the service is made, an order under

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Rule 16 has necessarily to be issued. It is also worthwhile to note that the expression 'Member of the Service' has been defined in Rule 2 to mean a person appointed in a substantive capacity to either grade of the service and includes a person appointed on probation to Grade II.

7. In view of these provisions, we repeatedly asked the learned counsel for the applicant to produce for our perusal the order of appointment of the applicant to DANICS in terms of Rule 16. The applicant has produced for our perusal an order dated 12.5.1983. This is an order passed by the Administrator, Delhi under Rule 25(3) of DANICS Rules, 1971 appointing the applicant to a duty post of the DANICS on an emergent basis for a period of six months from 18.1.1983. He has also been placed senior to another officer. He ~~was~~ also appointed to hold a duty post of DANICS. On such appointment he was posted to the duty post of DANICS viz., Deputy Superintendent, Grade-I, Central Jail. This order is relied upon to establish appointment to DANICS.

8. We notice that Rule 25 is in Part 'VIII' dealing with the officiating appointments. There may be circumstances when a service officer is not available for appointment to a duty post. This Part-VIII makes enabling provisions to meet this contingency. Rule 24 provides for preparation of a select list for officiating appointments, by relaxing the conditions of eligibility applicable to substantive appointments. Rule 25 provides that an officer included in the select list referred to in Rule 15(5) or an officer included in the special list prepared under Rule 24 for officiating appointment, may be given an officiating appointment. It also provides that, in the exigencies

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of service, an officer of the State Civil Service may be appointed on a duty post on deputation for periods not exceeding three years as the Central Government may decide. These are the provisions in sub-rules (1) and (2) of Rule 25. Sub-rule (3) which follows is reproduced below:

"(3) Notwithstanding anything contained in these rules, where appointment to a duty post is to be made purely as a local arrangement for a period not exceeding six months, such appointment may be made by the Administrator from persons who are included in the list prepared under sub-rule (4) of Rule 15, of rule 24 or who are eligible for inclusion in such a list".

9. A reading of these rules makes it clear that all appointments are to be made only by the Central Government. Sub-rule (3) ^{of Rule 25} only gives the Administrator a limited power to make a local arrangement for six months. It has no other significance.

10. The order dated 12.5.1983 has been issued appointing the applicant on a duty post of DANICS on an emergent basis for a period of six months from 18.1.1983 till further orders. It appears that this appointment has been continued by the Delhi Administration since then, because several other orders have been produced showing that he was continued in the DANICS duty post. The learned counsel for the applicant contends that on this basis alone the applicant is entitled to the reliefs sought.

11. We are unable to agree. Unless the applicant is appointed to the "service" under Rule 16, he cannot claim any seniority in the DANICS. Probably, his holding of duty post of the DANICS by virtue of orders issued under Rule 25(3) can give rise to a claim to count such service for the purpose of seniority in DANICS as and when he is appointed to that service.

However, we do not wish to look into this aspect of the matter. For the present, we are satisfied that appointment of the applicant under Rule 25(3) on local arrangement to duty post in DANICS, however, long it might be, cannot be construed to be the equivalent of an appointment to the service by an order under Rule 16. As the applicant has not established his appointment to the DANICS, he has no claim. Therefore, we do not find any merit in this O.A. and it is dismissed.

12. The learned counsel for the Respondent No. 2 states that an interim order has been issued in this case. The applicant was at some point of time working as Superintendent, Central Jail, Tihar and was in possession of the quarter in the premises of the Central Jail, Tihar. An interim direction was issued on 27.4.1992 not to dispossess the applicant from Quarter No. A-2, Central Jail, Tihar, New Delhi and the respondents were directed to provide alternative accommodation of his entitlement or whatever accommodation is available to the applicant. He requests that this order be vacated. The learned counsel for the applicant submits that the notification to hold the post of Superintendent, Central Jail, Tihar, New Delhi still continues. The learned counsel was evasive and did not answer our question whether the applicant was still holding the post of ^{Superintendent} Central Jail, Tihar, New Delhi. Respondents state that the applicant has long back been transferred from the duty post of Superintendent, Central Jail and hence he has no right to continue in that quarter.

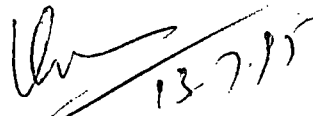
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13. We are of the view that this interim order has been passed only till the disposal of the case. In the circumstance, the interim order issued on 27.4.92 cannot continue any longer. It is revoked forthwith. However, we make it clear that in case the applicant has a right to continue in that quarter, otherwise than on the basis of the interim order we have revoked, it is open to him to state his claim before the competent authority for its decision, in accordance with law.

8. O.A. is disposed of accordingly. No costs.



(Smt. Lakshmi Swaminathan)
Member (J)



(N.V. Krishan)
Vice Chairman(A)

'SRD'