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Central Administrative Tribunal
Principal Bench
New Delhi
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O.A. No. 547/90

New Delhi, this the ~~2nd~~ **3rd** February, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K.SINGH, MEMBER (A)

J.P. Mukherjee s/o Late Shri D.C. Mukherjee,
Aged 58 Years,
R/O C-5/1, Aditi Apartments,
D-Block, Janakpuri,
New Delhi- 110 058.

Last employed as:

Under Secretary in the
Research and Analysis Wing,
Cabinet Secretariat,
Government of India,
Room No. 8-B, South Block,
New Delhi- 110 011.

Applicant

(By Shri B.B. Raval, Advocate)

Versus

Union of India through

1. The Cabinet Secretary,
Govt. of India,
Rashtrapati Bhawan,
New Delhi- 110 001.
2. Shri A.K. Verma,
Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Govt. of India,
Room No. 8-B, South Block,
New Delhi- 110 011.

Respondents

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

Judgement (

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

The applicant since retired on 31.3.1990 on
superannuation, filed this Application on 25th March, 1990

aggrieved by certain orders passed on his representation particularly the order dated 27th September, 1988 appointing the applicant to the Research and Analysis cadre R.A.&W. in the senior time scale w.e.f. 12.9.1986. The representation made by the applicant dated 18th October, 1989 was rejected by the order dated 18.12.1989 and the further representation dated 21.12.1989 was rejected by the order dated 2.1.1990.

2. The applicant prayed for the grant of the reliefs that the Notification dated 27th September, 1988 be declared as ultra-vires to the extent that it arbitrarily takes away the recognised and verified seven years Senior Class-I service of the applicant and declare him having been appointed to the Senior Time Scale in the RAS w.e.f. 1st October, 1983, the date on which RAS was initially constituted. The applicant has further prayed for the grant of due seniority from 1st October, 1983 followed by promotion in usual course and difference of pay and allowances followed by appropriate superannuation benefits with interest till date of realisation. Besides this he has also prayed for the award of the cost of this Application.

3. The facts of the case are that the applicant initially joined the service in the Intelligence Bureau, Ministry of Home Affairs in October, 1956. The organisation of Intelligence Bureau was bifurcated on 21st Sept., 1968

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and several officers including the applicant were placed in the newly framed organization i.e. Research and Analysis Wing (R&AW) under the Cabinet Secretariat, Government of India. Before his transfer to the R&AW the applicant was promoted as Assistant Central Intelligence Officer Grade-I (ACIO-I) on 1st March, 1963. He was further promoted while he was in R&AW to the next higher rank of Senior Field Officer (SFO) on 19th October, 1970. On the basis of interview conducted by D.P.C. for promotion of S.F.O.(GO) to the grade of J.A.D./A.D., the applicant was promoted to the rank of J.A.D. i.e. Joint Assistant Director by the order dated 27th June, 1979 and took over charge of the post on 10th July, 1979 at Agartala. This post of Joint Assistant Director was re-designated as Assistant Director and the applicant was, therefore, given the designation of Assistant Director w.e.f. 10th July, 1979 vide order of the Cabinet Secretariate dated 6th December, 1984. In the meantime the R&AW framed their own rules, RESEARCH AND ANALYSIS WING (RECRUITMENT, CADRE AND SERVICE) RULES, 1975 and Research and Analysis Wing (R&AW) was constituted. By the notification dated 27th September, 1988 the appointment of various officers was made by the President to various cadres of R.A.S. and the date from which such officers were inducted in service in the cadre was also notified on 27th September, 1988. The applicant was allotted Senior

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Time Scale from 12th September, 1986. The grievance of the applicant starts by virtue of this Notification allotting him Senior Time Scale with effect from 12th September, 1986 while some other officers in the Grade-IV of service were given this benefit from 1st October, 1983. The applicant, however, was informed by the letter dated 29th September, 86 that as per seniority list of Under Secretary(GD), promoted from S.F.O. as well as Deputationists who have since been absorbed in RAS received from the Cabinet Secretariat with their letter dated 29th September, 1986, the name of the applicant figures at Sl.No. 1 above one Shri K.S.Ratnam. The case of the applicant is that he was appointed to a Class-I post vide Cabinet Secretariat's Order dated 24th June, 1979 and his seniority should have been fixed on a much earlier date than from September, 1986 in the R.A.S. cadre. He has also the grievance that some of officers who were not promoted to the Senior Time Scale of Class-I service were placed above him and were given seniority of 1983. Infact certain other S.F.Os who were promoted to Under Secretary as late as 1986 were also given the same seniority in the said order of the Cabinet Secretariat dated 27th September, 1988. The applicant was informed on 6.1.1989 that it would not be possible to confirm him as Assistant Director retrospectively in the non-RAS cadre category as he was not holding a regular cadre post against which he would be confirmed. He was holding the ex-cadre post during the period from July 1979 to September, 1986 before his induction into

the R.A.S. cadre and as such he could not be confirmed retrospectively because the interest of senior previous ranks at that time were considered for promotion as Assistant Director against the non R.A.S. cadre post.

4. The respondents in their reply have taken the same stand as was conveyed to the applicant by orders while disposing of his representations. It is further stated that the R.A.S. rules were notified w.e.f. 21st October, 1975. Rule 25 of the Rules provides for the promotion of S.F.Os of the Junior Executive Cadre to the Senior Scale of Research and Analysis Service. Rule 7 of these rules provided that the members of the Research and Analysis Service or or Junior Executive Cadre who otherwise fulfil the eligibility conditions for promotion to be promoted to the next higher rank against the quota of posts meant to be filled through deputation, re-employment of retired Government servant, Direct Recruitment, promotion etc. Since the R.A.S. had not been constituted and the quota distribution of posts for the service and other components had not been specified, the promotions could not have been made in the RAS Cadre. The respondents have further stated that officers who were considered for encadrement to the R.A.S. at its initial constitution were those who were holding the Under Secretary/equivalent or above in R&AW on or prior to 21st October, 1975. The Selection Board also considered such of the officers who had joined the R&AW after 21.10.1975 but had given their options to

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join R&AW prior to 31st October, 1976. The matter of encadrement was not considered as a recommendation of the Selection Board sent for approval to Govt. in 1977 was not favourably considered by the Govt. and since there was a time gap, Review Selection Board was constituted which re-assessed the recommendations of the Selection Board without in any way changing the eligibility conditions and the criteria date for eligibility and the recommendations were submitted to the Govt. and final notification was issued for appointment to the service in April, 1985 onwards. Thus, the service was initially constituted with retrospective effect from 1st October, 1983. The applicant could not be taken in the initial constitution of the service in the Senior Time Scale as he was holding his appointment in the 50% quota other than that meant for research and analysis service and was outside the Research & Analysis Service Cadre. His appointment as Under Secretary was thus ex-cadre in nature. He continued to hold his rank in the rank of Senior Field Officer when the D.P.C. held in 1986 under the provisions of rule 25 of R&AW(RC&S) Rules, he was also considered alongwith other eligible Senior Field Officers/ Under Secretaries for appointment to the Senior Scale of R.A.S. The approval was received on 12.9.1986 from which date he was notified to RAS. Thus, according to the respondents, applicant was correctly appointed and the application does not merit consideration.

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5. The applicant has also filed the rejoinder re-iterating the points already averred in the Original Application. In the rejoinder, it is further contended by the applicant that constitution of R.A.S. was delayed by as long as 8 years and so all those officers who were duly promoted by a regularly constituted DPC as Assistant Director have to be taken as eligible on any cut off date. The respondents should have held the D.P.C. immediately after the cut off date and the D.P.C. infact was held in 1976 but no follow up action was taken till 1986. However, the cut off date for inclusion at the initial constitution of service in R.A.S. remains the same i.e. 21st October, 1975 which is arbitrary and malafide. Alongwith the rejoinder the applicant has also filed certain documents regarding option for fixation of pay whether they like their fixation of pay from the date of promotion/appointment to Senior Time Scale of R.A.S. or from the date of increment in the lower grade. He has also filed an order passed on 21st May, 1990 regarding the fixation of pay and the pay was fixed in the scale of 3200-4700 of RAS w.e.f. 12.9.1986 under FR 22 a(ii) with reference to their pay as Assistant Director (now Under Secretary) treating their appointment as Assistant Director as Assistant Director in direct line of promotion.

6. We have heard the learned counsel for both the

parties at length and perused the record. Chapter-III

Rule 13 of the Research and Analysis Wing (Recruitment

Cadre in Service) Rules, 1975 deals with the constitution

of Research and Analysis Service Cadre. The strength of the

cadre shall comprise of -

a) Senior duty posts;

b) Special deputation reserve;

c) Training service;

d) Leave reserve; and

e) Junior Posts.

Rule 21 regarding the initial constitution of the service

shall be from such date as the Govt. may, by notification, specify.

Rule 22 further provided requirement of service for eligi-

bility for appointment against each grade at the initial

constitution of service.

7. Now referring to rule 7, 25, 149 and Schedule-I,

the relevant rules which can be considered in the case of

the applicant are re-produced below:-

"Rule 7. Mode of filling the posts:- The post

in the Class I Executive Cadre shall be filled

in the manner specified in Schedule I:

Provided that the Appointing Authority may, at its discretion fill, in an officiating capacity, any of the posts mentioned in Schedule I which are reserved for deputation, transfer, re-employment of retired Government servants or direct recruitment, by members of the research and analysis wing holding Gazetted Class II posts who are eligible for promotion to equivalent grades in their cadre:

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Provided further that the Appointing Authority may at its discretion fill the posts reserved for deputation, transfer, re-employment of retired Government servants, or direct recruitment by promotion of Govt. servants on deputation to the Research and Analysis Wing or retired Government servants already re-employed in the Research and Analysis Wing in a lower grade subject their eligibility by virtue of length of service in the lower grade as prescribed for promotion of direct entrants in Schedule I, subject to the condition that the length of service in the Research and Analysis Wing is not less than 3 years".

"Rule 25. Promotion from Class II (Gazetted) Officers of the Research and Analysis Wing:

(1) Upto 25% of all posts in the cadre excluding the posts of Additional Secretary and above but including the leave reserve may be filled by promotion on the basis of "selection" from officers of the grade of Senior Field Officers in the Junior Executive Cadre who have completed not less than six years in that grade.

(2) Such officers shall be absorbed into the Service in the senior scale on succession completion of a trial period of one year in a duty post.

(3) (i) The year of allotment to the Service of such officers shall be the same as that of the junior most member of the service promoted to the Senior Time Scale in the same year and their position in the gradation list shall be immediately below him.

(ii) If, however, there has been no promotion from the junior time scale of the Service to the Senior Time Scale in a particular year, the year of allotment of officers promoted from the rank of Senior Field Officer in that year shall be five years preceding the year of promotion. (Example:- If no officer has been promoted in the year 1986 from Junior Time Scale to Senior Time Scale and if an officer of the Junior Executive Cadre is appointed in 1986 to the Senior Scale of the Service, his year of allotment will be 1981).

(iii) The inter se seniority, amongst those promoted from the junior Executive Cadre shall be in accordance with the position assigned to them by the Departmental Promotion Committee:

Provided that the year of allotment of no such officer shall be earlier than the year in which the officer holding the first position, started officiating on a regular basis as a Senior Field Officer."

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"Rule 149. PROMOTIONS - WEIGHTAGE FOR MERIT:

For every two consecutive outstanding annual confidential reports earned by an officer in the Research and Analysis Wing one year of his service may be added notionally to his total length of service in the grade in which he has earned such reports for the purpose of determining his eligibility for consideration for promotion to the next higher grade."

Method of filling up the posts in the
"Schedule I Class-I Executive Cadre of the R&A.W."

S1. Designation Method of fillings the
No. posts.

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6. Under Secretary/ (a) 50% by members of Senior.
Dy. Secretary. scale of or junior scale of
Research & Analysis Service.

(b) 50% by deputation or transfer or
by re-employment of retired
Government servants or by direct
recruitment as the Government may
decide on each occasion.

Qualification for direct recruitment			Qualifications and basis of pro- motion of direct entrants.		
Age	Minimum educational qualifica- tions.	Minimum experi- ence.	Rank from which pro- motion is to be made.	Minimum length of service in the rank shown in Col. 7.	Basis of promotion
4.	5.	6.	7.	8.	9.
Between 28 and 43 yrs.	Graduate of a recog- nised Univer- sity.	5 years in a position of respon- sibility.	-	-	-

8. Rule 21 as already referred to above deals with the initial constitution of the service shall be from such date as the Government may, by notification, specify.

On the initial constitution of the service permanent Class I general duty officers of the Intelligence Bureau transferred to the Research and Analysis Wing at the time of its formation shall be absorbed into the Service in a Grade not lower than their substantive grades on the date of absorption. Sub rule (2) further provides that officers already appointed in the Research and Analysis Wing against the posts on the junior scale shall be appointed to the Services. Sub rule (3) provides that the remaining cadre posts on the initial constitution of the service shall be filled on the advice of a Special Selection Board with the Head of the Organization as Chairman and an officer on Special Duty/Additional Secretary and a Joint Secretary nominated by the Government as Members. The selection shall be made as per officers of the Indian Administrative Services, Indian Police Service and the other All India Services and Indian Foreign Services. Sub clause (b) of sub rule 4 provided that the officers of the other Central Services Class-I. Sub clause (c) of sub rule 4 provided that Commissioned officers or retired/released commissioned officers of the Defence Forces and finally clause (d) sub rule 4 provided officers of the State Services eligible for appointment to equivalent posts in the Government. This is the initial constitution of R.A.S. The requirement of the services for eligibility for appointment against each grade at the initial constitution of service as referred to above is

laid down under rule 22. These eligibility conditions are provided in sub rules 2 to sub rule 4 of rule 22. The relevant clause is sub rule 4 of rule 22 which lays down that the officers from other services should have held or be eligible for holding a post in the Central or State Govt. not lower than the post ^{is} specified against each grade and for Senior Time Scale equivalent post in the Central Govt. is that of Under Secretary. The respondents in their reply had admitted that the initial constitution of R.A.S. was implemented w.e.f. 1st Oct., 1983. At that time, the applicant was holding the post in the Senior Time Scale of Class-I of the Central Service (Assistant Director Scale 1200-1700/-). The case of the applicant is, therefore, that he should have been encadred in the senior time scale of the services at the time of the initial introduction of the constitution of R.A.S. w.e.f. 1.10.1983. However, the respondents have disregarded the factual position and applicant was appointed in the senior time scale of Class I service w.e.f. 12th September, 1986. The seniority of the applicant in Class-I service from June, 1979 to September, 1986 amounted to denial of the service put by the applicant on the Class.I post of Central service. Infact the rules were enforced and notified w.e.f. 21st October, 1975 but the enforcement of the rules from that date has nothing to do with the initial constitution of service which has to be by the issue of a notification by the Govt. under rule 21 of the said

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rules. Infact a Selection Board was constituted and considered such of the officers who had joined RA&W till 31st October, 1976 and the Selection Board itself submitted its recommendation to the Govt. for approval in 1977 but the follow up action was deferred and the matter was again taken up in 1983 for reconsideration the matter by the Selection Board and a Review Selection Board was constituted which re-assessed the recommendations of the Selection Board without in any way changing the eligibility conditions. The initial notification was, however, issued for appointment to the service in April, 1985 onwards and the service was initially constituted with retrospective effect from 1.10.1983. Thus the cut off date is 1st October, 1983. The respondents, however, considered the fact that those officers who took over as Under Secretary after 21st October, 1975 were not eligible for consideration for appointment to ther service at the initial constitution. This stand of the respondents is contrary to rule 21. Here it may be recalled that the applicant was given appointment to the post of Assistant Director on regular basis w.e.f. 10th July, 1979, i.e. the same date the applicant took over charge of Joint Assistant Director as is evident by the Cabinet Secretariat order No. 2/39/79-SC dated 6th December, 1984 (Annexure A-IV). Thus before the recommendation was made by the Selection Board in 1984-85 the applicant had already been appointed on regular basis to the post of Assistant Director. This post of Assistant Director is equivalent to the post of Under Secretary.

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9. The applicant has filed the copy of the order dated 6th December, 1984 which goes to show that the President has pleased to sanction to the appointment of the applicant SFO to the post of Assistant Director on regular basis from 10th July, 1979. A B.P.C. was held in May, 1979 and after interviewing the applicant and others promoted the applicant on ad-hoc basis by the order dated 27th June, 1979 issued by the Cabinet Secretariat. The applicant has been further informed by the Director, N.G.O. by letter No. V-245/86 dated 29th September, 1986 that as per the seniority list of Under Secretary (GD) promoted from S.F.O. as well as deputationists who have since been absorbed in R.A.S. received from Cabinet Secretariat with their letter dated 12th September, 1986, the position of the applicant is at Sl.No. 1 below none and above that of Shri K.S.Ratnam. When the respondents have taken the stand in communication to the applicant by the Cadre Controlling Authority that he has been appointed as Assistant Director on regular basis w.e.f. 10th July, 1979 and that he was informed in September, 1986 that he is senior most in the seniority list of Under Secretary (GD), it cannot be said that he was not holding the post of Under Secretary on the date of initial constitution of the services, w.e.f. 1st October, 1983. If the Selection Board has not been considering

the matter earlier and it was only the review Selection Board which have made recommendation in 1984-85 for inducting officers in Senior Time Scale in RAS, the cut off date shall be the date when the D.P.C. met. If any of the officers has been considered for inducting in senior time scale w.e.f. 1.10.1983 (1st October, 1993) and at that point of time the applicant who had already holding the post of Assistant Director the senior time scale post in RAW then he cannot be denied the benefit of the service, he has rendered on regular basis from 10th July, 1979. The situation might have differed had he not been given regular appointment to the post of Assistant Director earlier called as Joint Assistant Director w.e.f. 10th July, 1979. The applicant was very much holding the post equivalent to the post of Under Secretary (GD) like others who have been inducted from 1.10.1983. The respondents are bound to abide by the communication addressed to the applicant by the Memo dated 12th September, 1986 which has never been rescinded by any competent authority and the contention of the respondents in their counter that it does not relate to the notification of Cabinet Secretariat and was dealt with an entirely different issue cannot be accepted. The respondents have also in their reply stated that the term "Seniority List" was used erroneously in that letter.

The contention of the respondents that S.F.Os who were promoted vide rule 7 of R&AW(RC&S), 1977 were regularised to to RAS Cadre only in 1986 and their seniority could have been drawn only after that cannot be accepted. If the respondents are taking considerable time in doing their own act then the service rendered by the applicant on Class-I post cannot be totally ignored. When the date of initial constitution of service of R.A.S. is notified as 1.10.1993 then it is to be seen whether those who are inducted on the initial constitution of service have been holding the equivalent rank of Under Secretary or not. If it is a fact then this fact cannot be altered by hundreds text in any manner what-so-ever. The contention of the respondents that the applicant was holding ex-cadre post cannot be accepted because the applicant joined in the Intelligence Bureau which was bifurcated into Research and Analysis Wing and this Research and Analysis Wing was held under Cabinet Secretariat. Out of this Research & Analysis Wing, R.A.S. has been constituted with definite set of rules and procedures for inducting persons in the services from various ex-cadre posts. In the conspectus of facts and circumstances, the applicant has made out a case that on the date of initial constitution of service i.e. on 1.10.1983 he was holding the rank of Assistant Director equivalent to the rank of Under Secretary (GD) and is entitled to that benefit.

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10. The applicant has since been retired from service on 28th Feb., 1990 and filed this Application on 26th March, 1990. While in service he had made representations to the respondents time and again in the year 1988 as well as in the year 1989 for antedating his induction in RAS w.e.f. the date from initial constitution of the service. The respondents in their reply only stated that after considering the representations made by the applicant, the same has been rejected with the approval of the competent authority. He was given the reply on 18th December, 1989 as well as in January, 1990 i.e. before his retirement. If the service of the applicant on the post of Assistant Director is totally ignored in the senior time scale then he will be treated as S.F.O. from July, 1979 to September, 1986 when his appointment in the senior time scale of R.A.S. was made on 12.9.1986. This position will be against the facts. The contention of the respondents that he was holding an ex-cadre post in the senior time scale was held earlier has no bearing with the present case in hand. If the initial constitution of the cadre under R&AW (RC&S) Rules, 1975 is with effect from 1st October, 1983, nobody's interest would be adversely effected if the appointments are made from retrospective date from the date of initial constitution of the service i.e. October, 1983.

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the applicant in senior time scale from 10th July, 1979 and he has also been allowed as a qualifying service and pensionary benefits after retirement and this benefit has to be given to him in seniority in R.A.S. Still, when the pay protection has been given to the applicant, the induction of the applicant from September, 1986 instead of October, 1983 has resulted in dis-advantage to the applicant which is arbitrary, unjust and unfair and against the R.A.S. Rules itself.

13. In view of the above facts and circumstances the present application is disposed of with the following directions: -

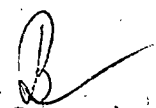
(a) that it is declared that the applicant shall stand appointed to the senior time scale in the R.A.S. w.e.f. 1.10.1983 i.e. the date when R.A.S. was initially constituted to the service. The applicant is entitled to all consequential benefits because of the ^{above} declaration in favour of the applicant and direct the respondents to give seniority in senior time scale of R.A.S. to the applicant from 1.10.1983 as per quota provided and that he should be considered for further promotion ^{by Review DPC} on the basis of that seniority followed by rotation of quota and may be given the benefit of fixation of pay, if any, admissible to him as a result of this fixation of revised seniority list.


(b) If the applicant because of revision of seniority list gets any re-fixation of pay in senior time scale and if

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falls for consideration for promotion to the next higher post his case should be considered by review D.P.C. and in such a case his pay should be fixed on notional basis on the promotional post for which the applicant has been recommended and considered for appointment, his pay shall be fixed notionally from that date till the date of his superannuation as he has not worked on that post, but he will get the benefit of its notional also fixation of pay. Infact his retirement benefits shall be revised if a need arises.

This Application is disposed of accordingly with no order as to costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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