

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 14/92

New Delhi this the 2nd day of August, 1996.

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

Hon'ble Shri R.K. Ahooja, Member(A).

Shri R.C. Mehta,
S/o late Shri H.L. Mehta,
R/o G-56, Nizamudin West,
New Delhi-13.

..Applicant.

By Advocate Shri V.S.R. Krishna.

Versus

1. Delhi Administration, through its
Chief Secretary,
5, Sham Nath Marg,
New Delhi-54.
2. Union of India through
Secretary to Govt. of India,
Ministry of Home Affairs, U.T. Section,
North Block, Central Secretariat,
New Delhi.
3. Union Public Service Commission, through its
Secretary,
Dholpur House, Shahjahan Road,
New Delhi. ..Respondents.

By Advocate Shri N.S. Mehta, Sr. Standing Counsel.

O R D E R

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

The applicant is aggrieved by the provisional seniority list of Grade-I and Grade-II of officers of Delhi, Andaman and Nicobar Islands Civil Service (hereinafter referred to as 'DANICS') dated 14.2.1991 (Annexure VI). He has filed this application under Section 19 of the Administrative Tribunals Act, 1985, claiming that his seniority has not been properly fixed while fixing it in the DANICS and his past service as Assistant Registrar Cooperative Societies (ARCS)

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w.e.f. 9.1.1974 has not been taken into account while fixing his inter se seniority in that service where he was inducted in 1985 on ad hoc basis and later regularised in 1988, and for consequential benefits.

2. The brief facts of the case are that the applicant was appointed on ad hoc basis to the post of ARCS by order dated 1.1.1974 and joined that post on 9.1.1974. Later, he was selected for that post by the UPSC and was regularly appointed to that post by Delhi Administration w.e.f. 28.4.1977 and confirmed w.e.f. 1.6.1981. Respondent No.1 - Delhi Administration - in exercise of the powers under Rule 25(3) of the Delhi, Andaman and Nicobar Islands Civil Service Rules, 1971 (hereinafter referred to as 'the Rules') appointed the applicant to duty post of DANICS on emergent and ad hoc basis by order dated 31.5.1985 as Sales Tax Officer with immediate effect. The applicant states that he continued to hold that post till the post of ARCS was encadred in the DANICS by notification dated 6.6.1988. The applicant has since retired from service on superannuation on 30.11.1994.

3. The applicant's case is that the post of ARCS is a Group 'B' post having the same pay-scale as Group-II of DANICS, namely, Rs. 650-1200 (pre-revised scale) and is of equal rank. He, therefore, claims that he has an equitable right to have due weightage of seniority to be given to his service as ARCS while fixing his seniority in the DANICS cadre.

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He also states that in the impugned seniority list, he cannot be shown junior to his subordinate rank officials, who are also promoted to the DANICS cadre. Shri V.S.R. Krishna, learned counsel for the applicant, submits that since the applicant has been continuously working as ARCS on regular basis from 1977, at least from that date his length of service should count in DANICS, especially when the post was itself encadred in DANICS on 9.2.1987. He relies on the judgement in Union of India Vs. G.N. Tiwari (AIR 1986 SC 348) and submits that the applicant should not be denied the benefit of continuous officiation in the post of ARCS..

4. Respondent No.2 - Union of India - have filed their reply in which they have taken the preliminary objection that the O.A. is barred by limitation as the applicant has claimed seniority from 1974 or 1977 or 1985 or 1987. They have stated that as the scale of pay of ARCS and that of Grade-II of DANICS was the same, a decision was taken in 1987 to take out the post of ARCS from Schedule-II and include it in Schedule-I of the Rules w.e.f. 9.2.1987. So long as the post was in Schedule-II of the Rules, it was a feeder post for promotion to the DANICS. The applicant was appointed to Grade-II of DANICS by notification dated 6.6.1988 under Rule 4(5) of the Rules. They submit that this notification does not have the effect of regularising any ad hoc service that might have been rendered by the applicant prior to his

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appointment in DANICS only w.e.f. 6.6.1988 and he cannot, therefore, claim seniority based on any service rendered prior to this date.

5. The respondents have also stated that the seniority list against which the applicant has filed this O.A., is only a provisional seniority list and the representations of the DANICS officers including that of the applicant, would be examined before the same was finalised. Shri N.S. Mehta, learned Senior Standing Counsel, has submitted that no weightage of service in a similar post rendered outside the service, as claimed by the applicant, can be given. The DANICS is an organised service and the members of the service can only claim fixation of seniority in accordance with the provisions of the Rules. The learned counsel has also pointed out that the appointment of the applicant on ad hoc basis under Rule 25(3) cannot also count, as only the appointment by the Central Government, i.e. Respondent No.2 under Rule 4(5) will count for service in DANICS cadre. He relies on the case of P.D. Aggarwal Vs. State of UP (1987(3) SCC 622). The learned counsel also submits that since the seniority list has been challenged, necessary parties who would be affected should have been included in the array of parties which has not been done by the applicant and hence the application is liable to be dismissed on this ground also.

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6. We have carefully considered the pleadings, records and arguments of the learned counsel for the parties. The applicant has filed a rejoinder in July, 1992, but other than the provisional seniority list no final seniority list, if any, has been impugned in these proceedings.

7. From the facts narrated above, it is clear that the applicant has been inducted in the DANICS under Rule 4(5) by the notification dated 6.6.1988. Prior to that date, he was not in that service and merely because he was holding a post with a similar pay scale or rank does not **ipso facto** entitle him to claim seniority in the DANICS from a date prior to the date he was born on that service; otherwise it would lead to an anomalous situation which cannot be legally justified. As regards the applicant's appointment against a cadre post of DANICS made by Respondent No. 1 - Delhi Administration - under Rule 25(3) of the Rules w.e.f. 31.5.1985, it is clear from perusal of this order that he was only appointed on ad hoc and emergent basis, initially for a period of six months. It was also mentioned ^{in this order} that this appointment will not entitle him to claim any right for regular appointment or for seniority or for appointment to this post or any other equivalent post under the Delhi Administration. We find that the applicant is also claiming seniority in DANICS from different dates beginning from 1974. The applicant is claiming seniority from 1987 by taking support of the

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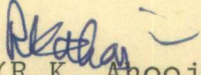
Ministry's notification dated 9.2.1987 by which the posts of ARCS were brought on the cadre of the DANICS by adding them to Schedule-I of the Rules. This notification of 9.2.1987 cannot also help the applicant as only in 1988 he was appointed in DANICS after due selection. The judgement of the Supreme Court in Union of India Vs. G.N. Tiwari (Supra) is distinguishable on the facts. That case dealt with the promotion of non cadre officers to cadre post of IAS when it was held that continuous period of officiation in senior post had to be taken into consideration in reckoning the year of allotment. In the present case, the applicant was encadred in the DANICS w.e.f. 6.6.1988 and his ad hoc officiation not included in DANICS cadre earlier in a similar post / cannot be taken into consideration for purposes of seniority. On the other hand, the Supreme Court in P.D. Aggarwal Vs. State of UP (Supra) have held that the Assistant Engineers were entitled to reckon their seniority from the date of their being members of the service but ad hoc appointees were not entitled to such benefits. The applicant, who was appointed by the Delhi Administration, under Rule 25(3) on ad hoc basis cannot, therefore, claim seniority based on the ad hoc service from 1985.

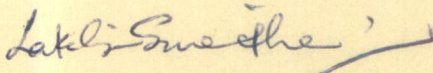
8. Apart from the above, the applicant's claim for seniority from 1977 or 1985 or 1987 is not only vague but is also barred by limitation besides jurisdiction as applicable under Sections 20 and 21 of the Administrative Tribunals Act, 1985. The applicant has become a Member of the DANICS under Rule 4(5) of the

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Rules by the notification w.e.f. 6.6.1988. He is, therefore, only entitled to have the seniority in the service fixed from this date in accordance with the Rules, as amended, and not from any other prior date, as claimed by him. In view of this, we do not think it is necessary to express a decision on the other arguments advanced by the learned counsel for the respondents.

9. In the result, we find no merit in the application and it is accordingly dismissed. No order as to costs.


(R.K. Anooja)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'