

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn. No. OA 1308/93

Date of decision: 22-10-93

Shri Sanjay Pratap Singh ...

Petitioner

vs.

Ministry of Home Affairs,
Secretary,
North Block, New Delhi
& anr.

... Respondents

For the petitioner ... Mrs. Meera Chibber, Counsel
For the Respondents ... Sh. N. S. Mehta, Counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

JUDGMENT
(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

The petitioner, a member of the Indian Administrative Service in the Arunachal Pradesh, Goa, Mizoram, Union Territory (AGMU) cadre, 1984 batch has come to this Tribunal with the principal prayer that the charge-sheet issued to him vide Memo No. 14036/2/91-UTS dated 16.11.1992 may be quashed.

2. The material averments in this OA are these. In November, 1990-91, the petitioner was transferred by the Ministry of Home Affairs to Pondicherry. He was not allocated any post and finally on 28.2.1992, he was relieved by the Government of Pondicherry and directed to report to the Ministry of Home Affairs, New Delhi for further orders. In obedience to the said directions, he reported to duty in the Ministry of Home Affairs, New Delhi on 3.3.1992 but was neither given any posting nor any salary. No orders were communicated to him on his reporting on 3.3.1992. He was not paid

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salary since April 1992 as well as full Transfer T.A. etc. due to him as per rules for his earlier transfers. He was constrained to prefer OA No.967/92 in this Tribunal praying therein for the quashing of the relieving order dated 28.2.1992 and for issuing a direction to the respondents to assign him suitable posting as well as pay him the T.A.& D.A dues. During the pendency of the said OA, on 8.4.1992 a communication dated 3.4.1992 from the Ministry of Home Affairs suspending him from service on the ground that disciplinary proceedings were contemplated and an investigation in a criminal case in which he was involved was going on. On 27.5.1992, he challenged the order of suspension in this Tribunal by means of OA No.1426/92 on a variety of grounds one of them being that the same had been passed without jurisdiction as the Ministry of Home Affairs was not the disciplinary/ competent authority qua him. The impugned chargesheet was filed in OA No.1426/92 while final arguments were going in it. Original Applications No.967/92 and 1426/92 were decided by a common judgement by a Bench of this Tribunal on 8.1.1993. This Tribunal quashed the order of suspension as being without jurisdiction. In spite of the provisions of Rule 3(1) of the Indian Administrative Service Pay Rules,1954(the Rules) he was not appointed to the Junior Administrative Grade(Non-functional) with effect from 1.1.1993 even though he had completed 9 years of service in the year 1993. He reliably learnt that his batchmates in the service have already been given the Junior Administratvie Grade with effect from 1.1.1993. On an enquiry from the Ministry of Home Affairs, ^{not to} he learnt that he had/ been appointed the Junior

Administrative Grade because the impugned charge-sheet had been issued to him.

3. The other reliefs, as material, are that the respondent No.2 may be directed to allow to the petitioner, the Junior Administrative Grade Rs.3950-125-4700-150-5000(Non-functional) of the Indian Administrative Service with effect from 1.1.1993 and to pay him arrears with effect from the said date.

4. In OA No.967/92 and OA No.1426/92, the Division Bench of this Tribunal held:

"Therefore, the order of suspension dated 3.4.1992 by the Ministry of Home Affairs(by order and in the name of Central Government) is clearly without jurisdiction and moreso when the entry relating to IAS Cadre of the U.T. and the Ministry of Home Affairs has become redundant with the abolition of IAS cadre of the Union Territory. We have already stated that it is for the appropriate authority to consider any substitute entry under the Ministry of Home Affairs for aforesaid entry under the Allocation of Business Rules. The order of suspension dated 3rd April,1992 is, therefore, set aside and the applicant should be treated as having continued in service with consequential benefits. The setting aside of the order of suspension dated 3rd April,1992 is without prejudice to the continuance according to law of the disciplinary proceedings against the applicant for which the charge-sheet has already been furnished to him or without prejudice to follow-up action with regard to criminal offence which was said to be under investigation."

In earlier part of the judgement, the Tribunal observed:

".... the suspension order or the charge-sheet could not have been issued by the order and in the name of the Central Government,since the Ministry of Home Affairs could have acted only as the Government of a State under Rule 2(e) of the AIS (Discipline and Appeal) Rules,1969."

5. Respondents in OA No.967/92 and OA No.1426/92 are also cited as respondents in the present OA. Admittedly, the judgement given in the aforesaid

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OAs has not so far been reviewed or set aside. It continues to operate and is binding on the respondents. It operates as res judicata between the parties to the present OA. It has also a binding force of a precedent so far as this Tribunal is concerned. The impugned charge-sheet issued by the same authority which passed the order of suspension is not sustainable on the ground that it has been issued without jurisdiction and, therefore, liable to be quashed. Indeed, the learned counsel appearing on behalf of the respondents made no efforts to defend the impugned charge-sheet. To be fair to him, it may be stated that he conceded the legal position that in view of the aforesaid judgement of this Tribunal, the impugned charge-sheet has to be quashed.

6. In the counter-affidavit filed on behalf of the respondents by Shri Rajeeva Ratna Shah, Joint Secretary(UT), Ministry of Home Affairs, Govt. of India, New Delhi, the material averments are these. An SLP has been filed by the Govt. before the Supreme Court against the order of the Principal Bench of this Tribunal dated 8.1.1993 in OA No.967/92 and OA No.1426/92. The present OA may be taken up after the SLP filed by the Government comes up before the Supreme Court for admission and interim orders. The interim order passed by this Tribunal takes care of the rights of the petitioner till the OA is heard and decided. The Joint Cadre Authority of Joint AGMU which is the cadre authority, had delegated powers to the Ministry of Home Affairs for all matters including disciplinary matters. The Ministry of Home Affairs thus has full powers to institute disciplinary proceedings against IAS officers of AGMU cadre. The Principal Bench, at no stage,

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had the occasion to adjudicate upon the validity of the chargesheet served upon the petitioner. At present, no officer junior to the petitioner has been appointed to the Junior Administrative Grade of the IAS and as such he had no claim, whatsoever, to Junior Administrative Grade. As per Rule 3(1) of the Rules, an IAS officer becomes eligible for appointment to the Junior Administrative Grade of IAS on completing 9 years of service. The Junior Administrative Grade is a non-functional grade. The Department of Personnel and Training by its letter dated 7.9.1987 has clarified that a member of the Service, who is under suspension or against whom disciplinary proceedings are contemplated or pending on the date on which he is eligible for Junior Administrative Grade, shall not be allowed the Junior Administrative Grade during suspension or when disciplinary proceedings are pending. On 16.8.1993 no batchmate of the petitioner had been allowed the Junior Administrative Grade. Grant of Junior Administrative Grade to the petitioner has to be preceded by his clearance from vigilance angle.

7. In the rejoinder-affidavit filed by the petitioner, the material averments, are these. S/Shri Anand Kumar and K.V.Eapen, who were junior to the petitioner in the batch have already been given the Junior Administrative Grade and are presently posted as Deputy Secretaries in the Surface Transport and Tourism Ministries respectively whereas if the petitioner is to be posted there, he would only be posted as Under Secretary thereby compelling him to work under his juniors. In spite of decision having been

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taken at the highest level to grant him the Junior Administrative Grade, the respondents are still not releasing the grade. The respondents may be directed to produce F.No.14016/20/93-UTS along with the orders of the Minister of State concerned passed in July, 1993.

8. A perusal of Rule 3(1) of the Rules indicates that an IAS officer becomes eligible for appointment to the Junior Administrative Grade of the IAS on completing 9 years of service. The said rule does not contemplate the withholding of appointment to the Junior Administrative Grade if an officer has completed the requisite period of service.

9. Annexure R-II to the counter-affidavit is a true copy of the communication dated 31.3.1987 of the Ministry of Personnel, Public Grievances and Pensions of the Government of India. Therein, it is inter-alia stated that an officer shall be allowed the Junior Administrative Grade on 1st July of the year in which he completes 9 years of service. This grade is non-functional and shall be admissible without any screening, to all the officers in the Senior Time Scale who have completed 9 years of service on the said date. For example, an officer whose year of allotment is 1978 shall be allowed the Junior Administrative Grade on 1st July, 1987.

10. Annexure R-I to the counter-affidavit is a true copy of the communication dated 7.9.1987 of the Ministry of Personnel, Public Grievances and Pension of the Government of India, inter-alia stating therein that a member of the Service, who is under suspension or against whom disciplinary proceedings are contemplated or pending on the

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date on which he is eligible for JAG, shall not be allowed the Junior Administrative Grade during suspension or when disciplinary proceedings are pending. After the disciplinary proceedings are completed, the case shall be taken up for review.

11. Annexure R-III to the Counter-affidavit is a true copy of the communication dated 16th March, 1993 of the Ministry of Personnel, Public Grievances and Pensions of the Govt. of India. Therein, it is inter-alia recited that it has been decided that since the Junior Administrative Grade is non-functional and is available to officers as a matter of course without any screening, officers may be allowed this grade from the 1st January of the year in which they complete 9 years of service.

12. A combined reading of Rule 3(1) of the Rules and the aforementioned communications of the Ministry of Personnel and Public Grievances and Pension of the Government of India indicates that the Junior Administrative Grade is a non-functional grade and is available to officers as a matter of course without any screening. However, the communication dated 7.9.1987 forbids the stepping of an officer to the Junior Administrative Grade who is under suspension or against whom disciplinary proceedings are contemplated or are pending on the date on which he is eligible. The factor of "clearance from vigilance angle" is wholly foreign to the provisions of Rule 3(1) and the contents of the aforementioned communications. Evidently, a new impediment in the way of giving the Junior Administrative Grade to an officer has been created by the respondents in the counter-affidavit. This is not permissible under law. This can be done

only by amending the statutory rules or by issuing executive orders in accordance with the Constitution. The position, therefore, is that but for the pendency of the disciplinary proceedings against the petitioner on the basis of the impugned charge-sheet, there is no other impediment in the way of the petitioner in being appointed to the Junior Administrative Grade(Non-functional).

13. We shall now deal with the plea raised in the counter-affidavit that the hearing of this OA may remain stayed till the SLP preferred by the respondents comes for admission before the Supreme Court and an interim order is passed therein. We may state that this was the only submission made at the Bar on behalf of the respondents in opposition to the present OA. We have given a thoughtful consideration to this plea. We are not inclined to accept this suggestion for more than one reasons. Firstly, in spite of the interim order passed by this Tribunal on 11.6.1993, the respondents have not given to the petitioner the Junior Administrative Grade(Non-functional) to which he became entitled with effect from 1.1.1993 on the ground that he is facing a departmental enquiry on the basis of the impugned charge-sheet. The interim order was: ".....In the meanwhile, the respondents are restrained from enforcing the charge-sheet dated 16.11.1992 as against the petitioner. We make it clear that it will be open to the respondents to press for the vacation of this interim order on the next date of hearing. We also make it clear that this interim order will have efficacy if the judgement dated 8.1.1993 in OA 967/92 and OA 1426/92 subsists." The Bench directed issuance of notice to the respondents on admission returnable on 25.6.1993. On 25.6.1993,

the representative of the department appeared for the respondents and prayed for two weeks' time to argue on interim relief. The respondents were directed to file their reply within four weeks and the matter was directed to be listed for admission on 10.8.1993 and for hearing on interim relief on 12.7.1993. On 12.7.1993, the departmental representative appeared and prayed for and was granted 4 weeks' further time for filing a reply. The interim order passed on 11.6.1993 continues to operate even now.

14. Secondly, the SLP was filed on 21.6.1993 against the judgement of the Tribunal dated 8.1.1993. In the rejoinder-affidavit filed by the petitioner, it is asserted that on 25.6.1993, the SLP was found defective but the respondents took no steps check it up and made no efforts to remove the defects. Till date the defects have not been removed (Affidavit sworn on 27.9.1993).

15. Thirdly, the SLP was filed on 21.6.1993 after this Tribunal passed the interim order on 11.6.1993.

16. Fourthly, on 25.6.1993, the respondents were granted four weeks' time to file a counter-affidavit. On 12.7.1993, as prayed by the departmental representative, four weeks' further time was granted to the respondents for filing their counter-affidavit. On 12.8.1993, the following order was passed:

" Departmental representative informs that their counsel Shri N.S.Mehta is busy in another court. Despite time being granted, no counter affidavit has been filed on behalf of the respondents. The representative states that only two weeks are required for filing counter affidavit. It is made clear that if by that time the counter is not filed, the court shall proceed

to dispose of the case finally on the basis of the material available on record on the next date. List on 8.9.1993, the date already fixed. Interim order earlier passed is extended till then."

On 8.9.1993, an application verified by a Desk Officer was filed stating therein the mere fact that an SLP had been filed in the Supreme Court. On that day, we passed the following order:

"As prayed for by the learned counsel for the respondents, be listed on 10.9.1993. An affidavit be filed by some responsible officer that SLP has been filed in the Supreme Court."

On 10.9.1993, an affidavit of Shri R.R.Shah, Joint Secretary (UT) was filed stating therein that against the judgement and order passed in OA 967/92, an SLP had been filed in the Supreme Court on 21.6.1993. On that day, we passed a detailed order stating therein that on a number of times the respondents were granted time to file a counter-affidavit. Para 4 of the orders ran as follows:

We see no connection between the filing of a S.L.P and the filing of a counter-affidavit. The respondents could have filed the counter and stated therein that a S.L.P has been filed. There is no justifiable cause for not filing a counter-affidavit. Public interest requires that a counter-affidavit should be filed. We, therefore, direct Shri R.R.Shah, Joint Secretary(UT), Government of India, New Delhi to either file his own counter-affidavit or cause the same to be filed by a responsible officer. We grant two weeks' further time to the respondents to file a counter-affidavit. We make it clear that, if the counter-affidavit is not filed within the time specified, Shri Shah would be held responsible for the same."

The matter was directed to be listed on 27.9.1993. On that day, the counter-affidavit was filed and the rejoinder-affidavit too was filed.

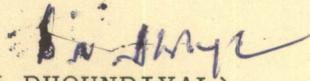
17. In view of the foregoing discussion, the impugned chargesheet is not sustainable and the

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petitioner is entitled to be appointed to the Junior Administrative Grade(Non-functional).

18. This OA succeeds and is allowed. The impugned charge-sheet issued vide Memo.No.14036/2/91-UTS dated 16.11.1992 along with articles of charge is quashed. The respondents are directed to allow ^{to the petitioner} the Junior Administrative Grade(Non-functional) of the Indian Administrative Service with effect from 1.1.1993 and pay him arrears with effect from the said date. This shall be done as expeditiously as possible but not later than three months from the date of presentation of a certified copy of this judgement by the petitioner before the authority concerned.

There shall be no order as to costs.


(B.N.DHOUNDIYAL)
MEMBER(A)


(S.K.DHAON)
VICE-CHAIRMAN(J)

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