

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Original Application no.
Transfer Application no.

321 of 1990

Date of Decision 10-12-96

H. C. Bharti

Petitioner

Sri O. P. Gupta

Advocate for the
Petitioner

VERSUS

Union of India and Others

Respondents.

Sri N. B. Singh


Advocate for the
Respondents.

CORAM

Hon'ble Dr. R. K. Saxena Member-J

Hon'ble Mr. S. Dyal Member-A

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordship wish to see the fair copy of the judgement ?
4. Whether to be circulated to all Bench ?


SIGNATURE

PIYUSH/

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 10th day of December 1996.

Original Application no. 321 of 1990.

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

H. C. Bharti, S/o Late Sri J.B. Saxena, R/o 397-E/9-A,
Meerapur, Allahabad.

... Applicant.

C/A Sri O.P. Gupta.

Versus

1. The Secretary to the Ministry of Finance, Department of Economic Affairs (Indian Economic Services), North Block, New Delhi.
2. The Development Commissioner, Small Scale Industries, VIIth floor, Nirman Bhawan, New Delhi.
3. The Director Small Industries, Service Institute, Govt. of India, 187-A, Attarsuiya, Gopal Park, Allahabad.
4. The Union of India, through Secretary Ministry of Industry Udyog, Govt. of India, New Delhi.

... Respondents.

C/R Sri N.B. Singh.

O R D E R

Hon'ble Mr. S. Dayal, Member-A.

The applicant has made this application under section 19 of the Administrative Tribunals Act, 1985 to claim seniority in Grade IV of the Indian Economic Services from the date of inclusion of his junior Sri Khurshid Ahmad in Grade IV on 22.06.80.

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2. The following reliefs have been specifically prayed for by the applicant in his application:-

- i. a direction to the respondents to include applicant's name in the seniority list with effect from 22.06.80 which is the date of inclusion of his junior Sri Khurshid Ahmad and grant subsequent promotions to the applicant on this basis.
- ii. a direction to give all consequential benefits including arrears with 12% interest; and
- iii. award the cost of the application.

3. The applicant has mentioned in his application that he was directly recruited as Small Industries Promotion Officer on 24.02.66, was confirmed on this post on 30.01.70 and was promoted to the post of Assistant Director Grade II on 17.09.73. He was deputed to the post of General Manager, District Industries Centre, Lakhimpur, Kheri, under the Govt. of Uttar Pradesh, and he relinquished the charge of Assistant Director Grade II on 31.03.80. The applicant's services continued with the Govt. of Uttar Pradesh till he joined as Asstt. Director I in his parent department on 14.06.85. His juniors Sri Khurshid Ahmad who was directly recruited as Small Industries Promotion Officer on 10.12.73 & confirmed on the post on 11.02.77, was included in grade IV of Indian Economic Services with effect from 22.06.80 in the draft seniority list circulated through Ministry of Industries on 03.04.86. A colleague of the applicant, Sri P.B. Bardhan, who


remained in the department and was recruited and confirmed as Small Industries Promotion Officer and promoted as Assistant Director Grade II on the same day promoted as Assistant Director Grade II on the same day as the applicant, has also been included in Grade IV of the Indian Economic Services with effect from 10.12.80. He claims that he remained senior to Sri Khurshid Ahmad all through the seniority list of eligible in-combents of feeder posts in Indian Economic services prepared in 1981. He has drawn attention to Rule 8(i) and (ii) of Indian Economic Service Rules to claim benefit of promotion on the basis of seniority. The applicant made a number of representations which were forwarded by his department to the cadre controlling authority. The applicant has mentioned in his RA that he was subsequently promoted to Grade IV of Indian Economic Services by an order dated 21.05.91 with effect from 01.10.90 pursuant to the direction of Supreme Court in the case of B.S. Kapila and other Vs Union of India and others in Civil Appeal no. 4612-1614 of 1990.

4. The arguments of Sri O.P. Gupta, learned counsel for the applicant and Sri N.B. Singh learned counsel for the respondents were heard.

5. The scope of the judgement in Narendra Chaddha case has been defined by the judgement of the apex court in Union of India and others Versus Pratap Narain

and others in Civil Appeal no. 3264 and 3265 of 1991 in Writ Petition (Civil) no. 178 of 1990 delivered on April 29, 1992. The benefit of the judgement has been extended to those who were on ex-cadre posts also and were continuously officiating on a class I ex-cadre post. The applicant was also working on a class I post outside the cadre, and, in view of the interpretation given in the above judgement, appears to be covered by that judgement. However, since the applicant has not based his claim on this contention, we take up the grounds advanced by the applicant for claiming relief.

6. The first contention of the applicant is that he was selected for deputation on the basis of his merit and was sent on deputation to the post of General Manager under the Govt. of U.P., and, if he had not gone on deputation, he would have been promoted to class I post in his own department in 1980 itself. Since the post of Asstt. Director Grade I on which Sri Khurshid Ahmad was promoted in 1980 was available when the applicant went on deputation, he would not have gone on deputation if the post had been offered to him. Even if promotion to the post was made after 31.03.80, the applicant should have been offered the post and he could have come back from deputation. Such action on the part of the respondents would have been possible only if order of inclusion of Sri Khurshid Ahmad, who was junior to the applicant, in grade IV Class I of I.E.S had been passed when the applicant was on deputation. From annexure A-8 to the OA it is clear that such inclusion was done by circular dated 03.04.86. This circular shows extreme haste because while the circular was issued on 03.04.86, objection of



factual inaccuracy (presumably from the officers included in the seniority list appended to the curricular) were asked for by 04.04.86. Therefore, any cause of action accruing to the applicant on account of his seniority arose only from that date. The applicant had come back from deputation on 14.6.85. When Sri Khrushid Ahmad was promoted in 1980 on ad-hoc basis, the department could not fore-see that officiation would be deemed to be on a grade IV post and could be counted for inclusion in Indian Economic Service. The regular promotion of the officer holding such post on ad-hoc basis was made with retrospective effect in order to implement the judgement of the Apex Court in Narendra Chaddha and others Vs. Union of India and others AIR 1986 SC 638. The order of Apex Court was on the ground of deemed relaxation of rule 8 of Indian Economic Rule owing to anomalies due to officiation on grade IV posts on ad-hoc basis by officers for 15 years or more without any action for regularising their services.

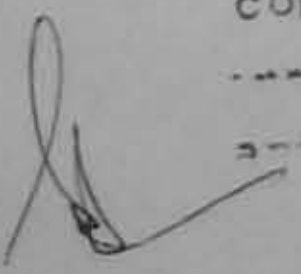
7. The respondents have contested that claim of the applicant and have stated that the applicant was not entitled to promotion because the direction of the apex court in Narendra Chaddhas case was limited to those officers who have been promoted on ad-hoc basis till 01.02.84 on post included in the cadre of Indian Economic Services. The applicant in his RA has controverted both these contentions. The first contention that only officers officiating on ad-hoc basis on the cadre posts were considered for promotion to Indian Economic Service on account of implementation of the judgement in Narendra Chaddha's case (Supra) was advanced by the respondents owing to the judgement of Principal Bench of this Tribunal in Pratap Narayan and others Vs. Union of

India and others in OA 844 of 1986 delivered on 08.09.89.

The operative portion of the judgment reads as follows:-

In view of the above discussion, the application is partly allowed with the direction that the impugned seniority list dated 8th May 1986 shall be modified by the Union of India so as to limit the benefit of continuous officiation towards seniority only to those incumbents who had continuously officiated against cadre posts included in grade IV of the Indian Statistical Service, even though their appointments were not made in accordance with Rule 8(1) (a) of the Rules. However, if such a person, after appointment to a cadre post, had come on deputation, against a post in the same or higher scale, and the cadre controlling authority certifies that but for his deputation, he would have continued to officiate in a Grade IV post of the service, the deputation period would not constitute a break and the benefit of continuous officiation would not be denied to him in respect of such period towards seniority. The promotions made to Grade III of the service shall also be revived in the light of the revised seniority list.

The applicant has, however, mentioned in his RA that the judgment in the case of Pratap Narayan and others was challenged by Union of India through Civil Appeal no. 3265 of 1991 and writ petition Civil no. 178/90 which was decided by the apex court on 29.04.92. The apex court in its order in the civil appeal and the writ petition mentioned above has drawn attention to the direction of court in Narendra Chaddha's case (Supra) to treat the persons promoted to several posts in Grade IV of each of the two services viz I.E.S and I.S.S, contrary to rules as regularly appointed to post in Grade IV



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and to give them seniority from the date of their continuous officiation. After stating the above the apex court has subsequently made it clear that the benefit was not confined only to those promoted on cadre posts and observed as follows:-

"This court has nowhere used the expression 'cadre post' or 'ex-cadre' in the judgement. Needless to say that these words are the alphabet of Service jurisprudence. In Narendra Chaddha's case it was legally impossible to make any distinction on the basis of cadre or ex-cadre posts. In any case if this Court intended to do so, it would have done it in clear terms. The word 'post' has been used by this court to indicate an appointment, a job or a position to which a person is appointed."

Thus benefit of the judgement in Narendra Chaddha's case was meant for not only officers who were officiating on cadre post but also for officers who worked on ex-cadre posts on the basis of their continuous officiation on such posts.

8. As far as the question of application ^{of the judgement dated 11.02.86} in Narendra Chaddha's case to the officers who were promoted on ad-hoc basis after 01.02.84 is concerned, the applicant has contended that interpretation of the respondents in their CA was not correct. The judgement ^{only intended} not z that the officer

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who were promoted on the basis of interim order of the court passed on 01.02.84 should be included in Indian Economic Service and Indian ^{Statistical} ~~Statutory~~ Services, but the court has intended to extend the benefit to the promotees till the date of judgement ^{which was 11.2.86,} as can be easily inferred from paragraphs 22 and 23 which are reproduced below:-

" We are aware that the view we are taking may upset the inter seniority between those promotees who were included in the Select Lists of 1970, 1982 and 1984 and those who are included later on or who have not been included at all till now. The existence of this possibility should not deter us from adopting a uniform rule in the case of all promotees and direct recruits to adjust the equities amongst them as regards their relative seniority in the light of the violent departure made by the Govt. both as regards direct recruitments and promotions which it had to make every year under the Rules. The prejudice which the promotees included in the Select Lists might suffer is marginal and has to be ignored.

Having given our anxious consideration to the submissions made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two Services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under R. 8(1)(a)(ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced

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to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the commission for appointment to such grade or post as provided in Cl (a) of R 9 Col the Rules. A seniority list of all promotees and the direct recruits shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts. This direction shall be applicable only to officers who have been promoted till now. This is the meaning of the direction given by the Court on February 1, 1984 which stated, 'we wish to make it clear that there is no question of any rotation system being applied under the Rules, as they exist now.' All appointments shall be made hereafter in accordance with the Rules and the seniority of all officers to be appointed hereafter shall be governed by R. 9-C of the Rules.*

The applicant has shown that the department of Statistics had understood the judgement partly in the above context by including officers promoted upto 11.02.86 in its order no. 11024/4/86-ISS dated 08.05.86 (annexure R-1). Therefore, the contention of the respondents that only officers promoted upto 01.02.84 were to be included on account of continuous officiation in I.E.S can not be accepted.

9. The respondents have contended that the applicant could be promoted on the basis of direction of the apex court given in B.S. Kapila and others vs. Cabinet Secretary and others given in Civil Appeals no. 4612/90 and 4613/90 in S.L.Ps 15176/87 and 15177/87 and Civil Appeal no. 1419/90 in SLP 11548/87 on 11.09.90. The order of apex court reads

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as follows:-

"Special leave granted.

Heard learned counsel for the parties. It has not been disputed that the appellants in these appeals were senior to Narendra Chadha in the cadre when this Court by judgement dated 11th February, 1986, in Narendra Chadha and others Vs. Union of India and others (1986) 1 SCR 211 disposed of the earlier dispute between some of the officers relating to a claim of inter se seniority.

After the matter was heard at length we had suggested to the Union of India that in view of the palpable injustice which the appellants before us in those appeals have been exposed to in the matter of fixation of their seniority obviously for no mistake of theirs the benefit of promotion on the basis of their own entitlement should be conferred on them and they should not be made to suffer. We are happy that on instructions from Mr. N. Tyagarajan, Deputy Secretary to the Ministry concerned who is present in Court, Mr. A Subba Rao appearing for the union of India, informs us that the suggestion made by us has been accepted subject to the condition that the appellants who get the benefit and others similarly situated who are entitled to the benefit would not claim consideration of their past service for readjustment of inter-se seniority. When they are promoted to the higher grade, their seniority will count from the date of such promotion and they would be entitled to all benefits on the basis of such promotion until superannuation. The posts which Union of India has agreed to create and/or to which on promotion, fitman would be done would lapse with the super-annuation of each of the incumbents of the benefit and would not be treated to be a permanent post in the cadre. We make it clear that apart from the promotion to the higher post the benefit accor-

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ding to future no past benefit is available to the appellant. Mrs. Pappu appearing for the appellant has assured us that no such claim would even be laid.

Mr. Subba Rao has agreed that the promotion shall be given effect to from 1st October, 1990. He indicates to us that apart from the appellants, if there be any ~~who~~ are entitled to this benefit, such person would be free to approach the concerned Ministry and ~~on~~ being moved they would also be entitled to [some benefit] to the same benefit.

The appeals are disposed of accordingly.
No costs."

This judgement is applicable to the parties in the case and to those who sought to take advantage voluntarily subject to terms and conditions of the judgement. It cannot be taken as applicable to all officers who were senior to Narendra Chaddha and not included in the I.E.S on the basis of the judgement of apex court in that case. It is ^{not} known whether the applicant was one of the parties in the civil appeals and S.L.Ps in which were covered by the judgement of B.S. Kapila's case (Supra). If the applicant was the party to any of these judgements or has voluntarily accepted ^{it} he would not be entitled to any further benefits beyond what have been given to him in terms of that judgement. Although it appears from the following sentence of the CA that the applicant was a party to civil appeals of B.S. Kapila's case (supra).

"That the feeder post holder, who had been left out and whose juniors had been included in the Indian Economic Services due to continuous officiation had later approached the Court, and in its judgement dated 13th September, 1990 in Special Leave Petition No. 11548 of 1987 Union of India Vs. B.S. Kapila and Special Leave Petition no. 15176/87-B.S. Kapila

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vs. Union of India, the Hon'ble Supreme Court has directed the Union of India to promote the applicant and other similarly placed w.e.f. 01.10.90

Neither the applicant nor the respondents have specifically stated that this was so. We, therefore, can not draw an assumption that the applicant had accepted the conditions imposed in B.S. Kapila's case (Supra).

10. The respondents have taken the plea that since the applicant has been sent on deputation on temporary and ad-hoc basis, the period spent on deputation will not count towards officiation on grade IV post in the I.E.S. This argument loses validity as the applicant seeks relief of promotion to grade IV of I.E.S from the date of promotion to his junior Sri Khursheed Ahmad. It is not denied by the respondents that the applicant was senior to Sri Khruseed Ahmad by about 7 years and 10 months and by several positions in the seniority list of persons working on feeder posts to I.E.S. Proviso to rule 8 (i) (a) (ii) of I.E.S rules reads as follows:-

"Provided that if any junior officer in Grade IV is eligible and is considered for promotion all officers who have completed not less than four years of service on a regular basis in that grade. Promotions shall be made in the order of seniority subject to rejection of the unfit by the controlling Authority on the advice of the Board."

It is clear from this rule that person senior to one who is considered for appointment against vacancies in I.E.S, should also be considered for promotion regardless of his

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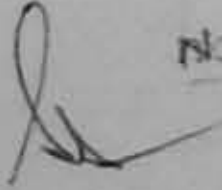
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length of service. It will be inconceivable that the persons junior to others are promoted in preference to the seniors even in relaxation of provision of I.E.S rules under rule 16 of I.E.S rule. In case of the applicant if such promotion to junior is given effect to, provisions of article 14 and 16 of the constitution will come in the way because the applicant also remained on class 1 post continuously from 01.04.80 to 11.02.86 and more till he was given benefit of B.S. Kapila's case (supra) w.e.f. 01.10.90. This also takes care of another argument of the respondents that the applicant was not entitled for promotion to grade IV of I.E.S because he had not worked on qualifying post for 4 years.

11. The applicant has claimed the benefit of FR 113 which reads as under:-

" A Government servant transferred to foreign service shall remain in the cadre or cadres in which he was included in a substantive or officiating capacity immediately before his transfer, and may be given subject to the conditions prescribed under the second proviso to Rule 30 (1) such substantive or officiating promotion in those cadres as the authority competent to order promotion may decide. In giving promotion such authority shall also take into account the nature of the work performed in foreign service.

Nothing in this rule shall prevent a member of a Subordinate Service from receiving such other promotion in Government service as the authority, who would have been competent to grant the promotion had he remained in Government service, may decide."

 Note under the FR stipulates that the principle for one

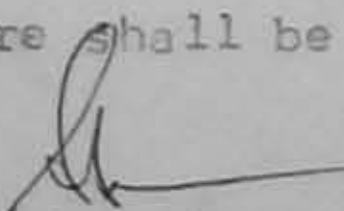
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for one in the next below rule will operate in such case also. This principle has come into effect from the year 1962 and would, therefore, be applicable to this case. The respondents have nowhere mentioned that there was any other case beside that of the applicant for conferment of benefit under FR 113. Even applying FR 113, the applicant will be entitled to proforma promotion from the date his junior was promoted. This FR becomes operative only after promotion of juniors and, therefore, benefit of this rule can not be denied to the applicant.

12. It is clear that the viewed from any angle, the applicant is entitled to be considered for inclusion in I.E.S with effect from the date of inclusion of Sri Khrushid Ahmad. Therefore, the respondents are directed to consider the applicant within three months from the date of communication of this order, for the same benefit which has been granted to Sri Khursheed Ahmad for inclusion in I.E.S, with effect from 22.06.80 and for grant of all consequential benefits including the difference in emoluments and promotion to the higher post in I.E.S from the date of promotion of Sri Khursheed Ahmad on those posts. This is subject to stipulation that the respondents shall ascertain that there is no estoppel on account of applicant being party to any of the Civil Appeal in S.L.P which were decided by B.S. Kapila's case (supra) or had volunteered to accept the judgement.

13. There shall be no order as to costs.


Member-A


Member-J

/PC/