

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.1084/1993

MONDAY, THIS THE 13TH DAY OF MAY, 2002

HON'BLE MR. JUSTICE R.R.K. TRIVEDI . . VICE CHAIRMAN

HON'BLE MR. C.S. CHADHA . . . MEMBER (A)

Jagdish Narain Dwivedi,
S/o Late Pt. Jamuna Dhar Dubey,
At present posted as Member (Judicial),
Board of Revenue, U.P.
Allahabad. Applicant

(By Advocates Dr. R.G. Padia and
Shri Prakash Padia)

Versus

1. The Union of India, through,
the Under Secretary,
Government of India,
Ministry of Personnel, Public
Grievances & Pension,
(Personnel and Training Department),
New Delhi.
2. The Union of India, through
the Secretary, Govt. of India,
Ministry of Personnel, Public
Grievances & Pension,
(Personnel and Training Department),
New Delhi.
3. The State of Uttar Pradesh,
through the Chief Secretary (Appointments),
Lucknow. Respondents

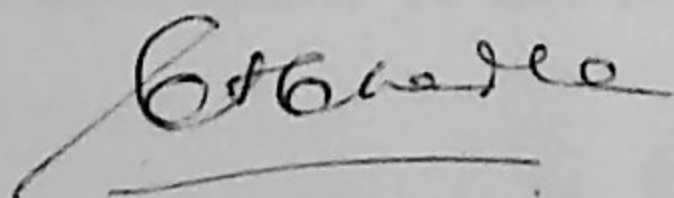
(By Advocate Shri K.P. Singh)

ORDER - (ORAL)

Hon'ble Mr. C.S. Chadha, Member (A):

This application has been filed challenging the
validity of the order dated 26.2.1993, by which the name
of the applicant Shri J.N. Dwivedi for grant of year of
allotment of 1980 in the IAS seniority list of U.P. was
rejected without assigning any logical reason.

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2. The contention of the learned counsel for the applicant is that the order dated 26.2.1993, is not strictly a speaking order. It simply reiterates the position of rules and goes on to add that the case of the applicant is not covered by those provisions.

3. The contention of the applicant is that it is no fault of his that he was not granted a cadre post, which formed the basis of allotment of seniority to other junior to him in the select list, whereas they were given cadre assignments out of turn. Even to those officers, who occupied ex-cadre posts, if the State Government grants the necessary certificate, the benefit of seniority is given. In the case of the applicant, the denial of the certificate seems to be arbitrary. No reasoning has been given as to why the applicant was ignored for appointment to a cadre post while his juniors in the select list were offered such posts. If the occupation of cadre post has to form the basis of the year of allotment, then the same should be done strictly in the order of merit in the select list.

4. In their counter affidavit, the respondents have merely stated that those granted seniority above the applicant on the ground of occupying ⁶the cadre posts have not been impleaded and therefore, this relief cannot be granted. We are afraid that this argument carries no force because the merits/demerits of the seniority of those persons has not been questioned. The very nexus of the process of grant of seniority has been questioned and therefore, their impleadment is not necessary.

Chandrasekhar

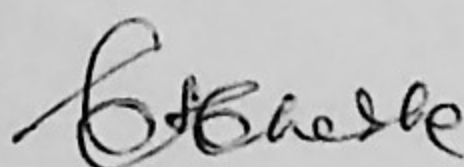
5. The learned counsel for the respondents also stated that the applicant was not offered a cadre post because there were limited posts of that nature and no certificate in his favour was therefore granted by the State Government. We are afraid that this is only repeating the grievance of the applicant because no rational basis for rejecting the claim of the applicant for being appointed to a cadre post has been mentioned and neither has it been claimed that no junior of the applicant was appointed to a cadre post. The mere denial of the certificate without assigning any reason for not granting a senior person a cadre post does not in any way diminish the merits of the claim of the applicant. The denial of the certificate would be material and acceptable if the posting to a cadre post was strictly in accordance with the seniority in the select list prepared for the purpose of promotion to I.A.S.

6. In view of the above, we find that the applicant has been unfairly treated as his juniors were appointed to cadre posts without any reason and using that fact, the applicant's year of allotment has been depressed by one year. We must observe that by a memorandum dated 25.2.1992, from the Department of Personnel, it has been clearly mentioned that "the representation submitted by Dr. J.N. Dubey has been examined carefully and it is felt that undue hardship has been caused to him by the application of the aforesaid proviso. Hence, it is proposed to invoke the powers available under Rule 3 of the All India Services (Conditions of Service Residuary Matters) Rules, 1960, to

At C. A. D. 4..

relax the 1st proviso to Rule 3(iii) of the Seniority Rules, consequently Dr. Dubey would be entitled to 1980 as the year of allotment in I.A.S." However, the State Government did not act upon this recommendation.

7. The O.A. is allowed because the applicant has already retired and sending the applicant back to the State Government/Union Government for deciding the seniority will mean further undue hardship to him and waste of time. We therefore, direct that the seniority of Shri J.N. Dubey be fixed immediately above the person from the same select list to which Shri Dubey belonged, and who was allotted the seniority of 1980 by virtue of his officiating in a cadre post. Shri Dubey shall be entitled to all consequential benefits of seniority and pay fixation, Pension, etc. There shall be no order as to costs.


MEMBER (A)


VICE CHAIRMAN

psp.