

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 430 of 2007

Allahabad this the 21 day of July, 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Vineet Dwivedi, son of Shiv Kumar Dwivedi, R/o RB (IV)/531, Myor Road, Allahabad. Presently working as Dy. Finance Advisor And Chief Accounts Officer, North Central Railway, Allahabad.

Applicant

By Advocate: Mr. S.K. Om

Vs.

1. Union of India through General Manager, North Central Railway, Headquarter Office, Nawab Yusuf Road, Allahabad.
2. Secretary (GR) Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
3. Deputy Director (Estt.) (G.R), Railway Board, Rail Bhawan, New Delhi.
4. Secretary, Department of Personnel and Administrative Reforms, Central Secretariat, New Delhi.
5. Secretary, Union Public Service Commission, Dhoulpur House, Shahjahan Road, New Delhi.
6. Ajeet Kumar.
7. Dhruba Jyoti Sen Gupta.
8. Vinay Hande.
9. Ajeet Kumar Srivastava.
10. Vivek Prakash Tripathi.
11. Sanjay Bisariya.
12. Anurag Kapil.
13. Nilanjan Bhowmick.

S.C. Sharma

14. Deepa Kotnis (Ms.)
15. Amita Shukla (Ms.)
16. Zaigham Ali Khan.
17. Ajay Srivastava
18. Randhir Sahay.
19. Rohit Raj Gupta.
20. Subhashisha Nath.
21. Shashi Kant Misra.
22. Ms. M.R. Vij.
23. Abheejit Kumar Sinha.

All are working under the administrative control of Secretary E/GR/Railway Board and their addresses are not known to the petitioner, however, the notices thereof be served through Secretary E/GR/Railway Board, Rail Bhawan, New Delhi.

Respondents

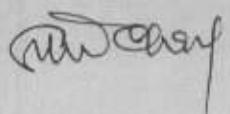
By Advocate: Mr. Anil Kumar

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Instant O.A. has been instituted for the following relief (s): -

- "(i) issue writ, order or direction in the nature of certiorari quashing the orders dated 27.2.2006 and 28.12.2006 (Annexure Nos. 8 and 12) passed by respondent No. 2 and 3 respectively;
- (ii) issue further writ, order or direction in the nature of certiorari quashing the OM dated 6.6.1978 in so far it directs to place a candidate at the bottom of next year's batch;
- (iii) issue writ, order or direction in the nature of mandamus commanding the respondents to correct the seniority list dated 31.10.2005 issued by the respondent No. 3 and thereby placed the petitioner at the appropriate place i.e. at the bottom of 1997 batch;
- (iv) To issue any other writ, order or direction which this Hon'ble Tribunal deems fit and



proper in the facts and circumstances of the case.

(v) Award costs of the original application in favour of the applicant."

2. The facts of the case may be summarized as follows: -

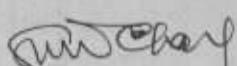
It has been alleged by the applicant that he was initially selected in Indian Forest Services (hereinafter referred as IFS) in 1997 Examination, and in pursuance of that he joined IFS in May 1998. The applicant also appeared in the year 1997 in the Indian Railway Accounts Services (hereinafter referred as IRAS) and the applicant qualified in this examination also on the basis of Civil Services Examination, 1997. In the batch, the applicant was placed at 7th position. After selection in IRAS, appointment letter was issued to the applicant on dated 01.12.1998, and he was required to join and report at Railway Staff College, Vadodara on 21.12.1998. But prior to issue of offer of appointment on 01.12.1998, the applicant had already joined the IFS in pursuance to 1997 examination and was undergoing training at Indira Gandhi National Forest Academy, Dehradun and due to this fact there had been delay in tendering the resignation from IFS and that is

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why the applicant could not report for duty on 21.12.1998 at Railway Staff College, Vadodara, as directed in the offer of appointment. In the meantime on 08.02.1998, the respondent No. 2 cancelled the offer of appointment. After knowing this fact, he moved an application on 01.04.1998 expressing his willingness to join IRAS, annexure A-3 is the copy of application dated 01.04.1999. The application of the applicant was revived by respondent No. 3 vide order dated 08.12.1999 and directed to the applicant to report to Railway Staff College, Vadodara on 10.01.2000. In pursuance of the letter dated 08.12.1999 there was delay in joining of the applicant and in this manner, he lost his original seniority at the appropriate place (7th) of 1997 batch but it was stipulated by the respondents in the letter dated 08.12.1999 that he will be placed at the bottom of IRAS 1997 batch. Due to this reason, the applicant had considerably lost his seniority below almost about 12 officers. But even then, applicant decided to quit the IFS and he tendered his resignation and to join the Railway Staff College, Vadodara. The applicant had already undergone foundation training

S. W. Chary

course at Mussorie (while imparting training in IFS), therefore, the applicant was exempted from foundation training course vide letter dated 14.09.2001, and his probation period was curtailed by three months. The applicant completed his probationary period and all necessary examinations and thereafter vide order dated 17.09.2001 he was allocated Central Railway of 1997 batch. Annexure A-6 is the letter to this effect. In pursuance of the letter dated 17.09.2001, applicant had joined at Central Railway, Mumbai CST on 18.09.2001. It is alleged that none of the candidates of 1998 batch had joined before the applicant's joining at Central Railway on 18.09.2001. Thereafter, applicant had been working as IRAS. After joining of the applicant, the respondents did not issue any seniority list, however, an inter-se seniority position of direct recruits of Civil Services Examination, 1997 was issued by the respondent No. 3, and in that list applicant's name had not been shown. It has been stated that the seniority list dated 11.08.2005 was not issued to the applicant and that is why applicant could not know about the same. Another seniority list was issued on



31.10.2005 of 1998 batch wherein applicant was placed at the bottom. It is alleged that there is no justification for the respondents to place the applicant in the seniority list of 1998 batch and that too at the bottom. It was only mentioned in the letter dated 08.12.1999 that the applicant will lose his seniority of batch of 1997. Another letter was issued by the ~~respondent~~ ^{applicant} on 27.02.2006 stating that inadvertently the applicant was placed at the bottom of 1997 batch instead of IRAS 1998 batch, and in the letter there is a reference of DOPT letter dated 06.06.1978 and O.M. dated 09.08.1995, copy of O.Ms has been produced. It is claimed that no opportunity was provided to the applicant to show cause before passing the order dated 27.02.2006 regarding placing him at the bottom of 1998 batch. A representation was made and the same was rejected on the ground that inadvertently the applicant was placed in the bottom of 1997 batch, and that earlier offer of appointment was cancelled but it was revived later on. It is alleged that this action of the respondents is against the public interest as well as the administrative interest as there is acute shortage of IRAS staff, and

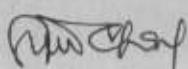
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due to this reason offer of appointment was revived of the applicant. It was not open to the respondents to change the offer unilaterally on the mere ground of inadvertent mistake. It is alleged that much injustice has been committed to the applicant by placing him at the bottom of 1998 batch, and not at the bottom of 1997 batch. There was sufficient reason for not joining in pursuance of first offer of appointment but offer was revived again, and letter was sent in this connection. Hence, the applicant is entitled for restoration of his seniority at the bottom of 1997 batch.

3. The respondents contested the case, and filed the Counter Reply. It has been admitted that the applicant was selected in the IRAS Examination of 1997 batch, and offer of appointment was issued to him on dated 01.12.1998. This offer of appointment was issued with clear instructions to report at Railway Staff College, Vadodara by 21.12.1998. It was also mentioned that no extension in joining time will be given and offer of appointment will be cancelled if the candidate

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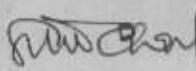
failed to join within the date specified but the applicant did not join within the specified date. It was stated in the letter dated 08.01.1999 that offer of appointment, issued to him, was being cancelled. It is stated that after lapse of nearly 2 months a request was received from the applicant on dated 01.04.1999, wherein he expressed his intention to join in the IRAS, and the request of the applicant was considered in consultation with the U.P.S.C. While the request of revival of offer of appointment was considered, a specific objection was raised by the U.P.S.C. that it is not clear that as to why the applicant wants to resign from IFS to join IRAS as both the services are Group 'A' scale services, and the applicant was required to clarify this fact. Explanation was submitted on 16.08.1999 by the applicant and he explained that he was eager to join IRAS as it will enable him to look after his ailing parents which he will not otherwise be able to do in Indian Forest Service. The commission considered the request in the light of DOPT O.M. dated 05.06.1978 and conveyed their concurrence to the proposed revival of offer to the applicant vide letter dated



09.11.1999, and accordingly applicant was directed to report to the Principal, Railway Staff College, Vadodara on 10.01.2000. The rules regarding fixation of seniority of the candidates whose appointments have been revived, after lapse of the original offer of appointment, DOP&T's issued O.M. dated 05.06.1978, and in accordance with the O.M. of the DOP&T's in case the candidate joins after some or all the candidates of the next selection/examination have joined, he should be allotted to the next year's batch and be placed at the bottom. Since some of the candidates of IRAS 1998 batch had joined on 20.09.1999, and the applicant had joined on 10.01.2000 hence the applicant was placed at the bottom of IRAS 1998 batch, and inter se position of the applicant was circulated vide letter dated 31.10.2005. While undergoing revival of offer of appointment vide letter dated 08.12.1995, inadvertently it has been mentioned that the applicant will be placed at the bottom of IRAS 1997 batch, which was later on rectified vide Ministry's letter dated 27.02.2006, and the applicant was advised vide this letter that he will be placed at the bottom of IRAS 1998

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batch. Hence, the applicant was placed at the bottom of IRAS 1998 batch in view of terms of DOPT O.Ms dated 05.06.1978 and 09.08.1995. In the earlier letter there was a factual mistake hence it was rectified vide corrigendum letter dated 07.03.2006, and the representation of the applicant was also disposed of by the Ministry. When the offer of appointment was made to the applicant, at the time he was satisfied from IFS and no effort was made by him within the specified time to join the IRAS. Incase applicant had any valid reason then he could have made efforts in that connection. Resignation might have not been submitted to the IFS within time so that he could join the IRAS on 21.12.1998. Even after receipt of telegram dated 04.01.1999 regarding cancellation of offer of appointment, nothing was received from the applicant, and the letter was received from the applicant on 01.04.1999 after a period of two months of cancellation of offer, and during this period allotment of officers of IFS was being decided. The applicant having come to know that he was being allotted Jammu & Kashmir cadre, he became desperate to join the IRAS, and it is wrong to



allege that the applicant was keen to join in the IRAS. It is claimed that the applicant had rightly been placed at the bottom of 1998 batch in view of O.M. issued by the DOP&T. Further the respondents specifically denied from the allegation made in the O.A.

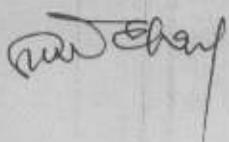
4. In response to the Counter Reply of the respondents, the applicant also filed the Rejoinder Affidavit, and he reiterated the same facts, as alleged in the O.A.

5. We have heard Mr. S.K. Om, Advocate for the applicant and Mr. Anil Kumar, Advocate for the respondents, and perused the entire facts of the case.

6. In view of the admitted facts, it has been emerged that the applicant appeared in the IRAS 1997 examination, and he qualified in the examination and placed at 7th place in his batch. It is also undisputed fact that offer of appointment was issued by the respondents in the IRAS on 01.12.1998, and in this offer applicant was required to join/report at the Railway Staff College, Vadodara on 21.12.1998.

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The applicant alleged that he also appeared in the IFS examination of 1997 batch and he was selected in that examination also, and in pursuance of the examination, he joined in the IFS in May 1998. The offer of appointment in the IRAS was issued on 01.12.1998 when the applicant was under training in the IFS. It is also an established fact that no action was initiated on the part of the applicant to join in pursuance of offer of appointment after tendering resignation from the IFS, and ultimately on 04.01.1999 a telegram was sent to all the candidates, who had not reported in the Railway Staff College, Vadodara that as they have not joined, their offer of appointment is to be cancelled. Thereafter, on 08.02.1999 an order was passed for cancellation of offer of appointment. There is no dispute to these facts. It has been alleged by the applicant that on 01.04.1999, the applicant moved an application in order to revive offer of appointment of the applicant. It has been argued on behalf of the applicant that vide order dated 08.12.1999, offer of appointment was revived and the applicant was directed to report to Railway Staff College, Vadodara on



10.01.2000, and it was also made clear in the letter dated 08.12.1999 that due to late joining the applicant will have to loose his original seniority at the appropriate place in 1997 batch. But it has been provided that the applicant would be placed at the bottom of IRAS 1997 batch. Annexure-4 is the letter of the respondents of dated 08.12.1999. It has been stated in the letter as under: -

"I am directed to state that your request has been considered in consultation with UPSC and that the offer of appointment to IRAS issued to you under Board's letter N. 98/E (GR) I/10/1 dated 1.12.98 cancelled under Board's letter No. 98/E (GR) I/4/1 dated 8.2.1999 is revived. However, you shall be placed at the bottom of the IRAS 1997 bottom.

The Railway allocated to you will be communicated in due course. You are directed to report to Principal, Railway Staff College, Vadodara on 10.01.2000 for further training. Please note that no extension in joining shall be granted."

7. Learned counsel for the applicant placed reliance on this letter of the Railway Board, and it has been argued that the applicant had joined so late on the assurance and the written letters of the respondents that he will be placed ^{at}~~at~~ bottom of IRAS 1997 batch. It was not stated to him that bottom seniority of 1997 batch will not be given to him rather the bottom seniority of 1998 batch will be given to him. In case the respondents might have

Sunil Chauhan

clarified their stand, then applicant might have not joined in the IRAS and he continued to work in the IFS 1997 batch. It is not sufficient to state by the respondents that inadvertently it was stated in the letter dated 08.12.1999 that he will be given bottom seniority in the IRAS 1997 batch. It is alleged by the applicant that the respondents cannot withdraw this letter dated 08.12.1999 and it is binding on the respondents in spite of the fact that it is against the spirit of the earlier DOP&T's Office Memorandums. It can be presumed that this letter may be treated as Promissory Estoppel. Although it has not been argued by learned counsel for the applicant that it will amount to Promissory Estoppel but we have considered this aspect of the matter whether it will operate as a Doctrine of Promissory Estoppel, and it will be binding on the respondents, and now the respondents cannot be permitted to ~~resign~~ from the stand disclosed in the letter dated 08.12.1999. It has been argued on behalf of the applicant that he joined in the IRAS on the written assurance of letter dated 08.12.1999 otherwise he might have not joined in the IRAS after resigning

resign

from the IFS of 1997 batch. For invoking doctrine of promissory estoppel, it is essential that such a decision on the part of the respondents must not be expressed by such a letter but it must be in accordance with the executive instructions issued earlier. Moreover, Doctrine of promissory estoppel was based on equity/obligations. It is not based on vested right. The court will have to strike a balance between individual rights on one hand and the larger public interest on the other hand. In the larger interest of the public, certain notifications were issued by the DOP&T and those Office Memorandums issued by the DOP&T must also be taken into consideration while issuing the letter dated 08.12.1999. There is no mention of those Office Memorandums issued by the DOP&T in the letter dated 08.12.1999 (annexure-4). As request of the applicant for revival of appointment was received, then certain queries were made from the applicant and afterwards the offer of appointment was revived and in that offer of revival it was provided that the applicant will be placed at the bottom of 1997 IRAS batch, and it appears that the respondents were not aware

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about the Office Memorandums issued by the DOP&T in this connection. Later on when the matter was considered in consultation with the U.P.S.C. for fixing the seniority of the applicant then it was noticed that the DOP&T issued certain O.M. in this connection. Annexure-7 is the letter dated 31.10.2005 issued by the respondents regarding the inter se seniority position of the applicant and according to this letter, the applicant was placed at the bottom of 1998 batch. Following has also been alleged in the letter as under: -

"2. The inter se seniority position of Sri Vineet Dwivedi, who was selected on the basis of Civil Services Examination 1997 batch on revival of his offer of appointment has been determined as per the instruction of Department of Personnel and Training's (earlier Department of Personnel and A.R.) circulated vide O.M. No. 9/23/71-Estt. (D) dated 06.06.1978, as amended by their O.M. No. 35015/2/1993-Estt. (D) dated 09.08.1995.

3. The inter-se seniority of the remaining 18 officers mentioned above as also the promotion made on the basis of the same will be subject to the final outcome of the WP (C) No. 8444/2003 filed before the High Court of Delhi, New Delhi."

Vide this letter, the respondents informed that his inter-se seniority position shall be that as per O.M. issued by the DOP&T. As we have stated that the letter dated 08.12.1999 was issued without any reference of the Office Memorandum of the DOP&T and whereas when the question arises for fixing inter-se seniority

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position of the applicant with the others, same was decided in view of the O.M. of DOP&T.

8. From perusal of this letter dated 31.12.2005 (annexure-7) it is evident that some of the persons of 1998 batch joined on 20.09.1999 and some joined on 10.01.2000 at the time when the applicant joined. Learned counsel for the respondents argued that in view of the O.M. issued by the DOP&T in such circumstances, seniority is to be fixed of a person placing him at the bottom of next batch. Annexure-9 is the Photostat copy of the O.M. issued by the DOP&T on dated 05/06-06-1978 and amended O.M. dated 26.09.1995. These Office Memorandums specifically dealt with the situation like the present O.A. Following has been provided in the O.M. of 06.06.1978 as under: -

"It has come to the notice of the Government in certain cases, the candidates recommended by them for appointment take long time to join and there have also been cases where offers of appointment were revived by Departments after they had been cancelled and in spite of the long delay in joining, the candidates were allowed of the benefit of seniority on the basis of their initial selection. The question whether in such cases it would not be desirable to depress the seniority of the candidates who are appointed on the result of the selection by interviews/examination was considered by the Government in consultation with the UPSC and it has not been decided that the following procedure may be adopted. This

Sudhanshu

procedure will be applicable both in cases of (a) selection through interview and (b) examinations.

(iv) An offer of appointment which has lapsed, should not ordinarily be revived later, except in exceptional circumstances and on grounds of public interest. The Commission should in all cases be consulted before such offers are revived.

(v) In a case where after the lapsing of the offer, the offer is revived in consultation with the Union Public Service Commission as mentioned in sub-para (iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the prescribed period of nine months, and if the candidate joins before the candidates of the next selection/examination join, he should be placed below all others of his batch. If however, the candidate joins after some or all the candidates of the next selection/examination have joined, he should be:

- (a) In cases of selection through interview, placed at the bottom of all the candidates of the next batch.
- (b) In the case of examination, allotted to the next year's batch and placed at the bottom.

Afterwards the amended O.M. was issued by the Ministry of DOP&T in this connection.

Following has been alleged in the amended O.M. of 9th August 1995, as under: -

"The matter has been examined in consultation with the U.P.S.C. and it has been decided to reduce from nine months to six months the maximum time up to which an offer of appointment can be kept open. In other words an offer of appointment should clearly specify the period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate did not join within the specified period. If, however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in any case only up to a maximum of six months from the date of issue of the original offer of appointment. An offer of appointment would lapse automatically after the expiry of six

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months from the date of issue of the original offer of appointment."

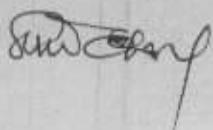
Firstly in the O.M. of dated 06.06.1978 it provided that in case a candidate failed to join in pursuance of offer of appointment within specified time, and his offer of appointment is revived later on then such a candidate shall be placed at the bottom of that batch. It has further been provided that in case candidate joins some or all the candidates of the next selection/examination join, then such a candidate must be placed and allocated to the next year batch, and placed at the bottom. It is a fact that the offer of appointment of the applicant was revived in pursuance of his letter dated 01.04.1999 when already offer of appointment was rejected, and cancelled vide letter dated 08.02.1999. Prior to joining of the applicant, candidates of 1998 batch joined and it has been provided that if some or all the candidates, as selected, have joined then such candidate shall be placed at the bottom. It is a fact that the applicant was selected in the batch of 1997 of the IRAS and in consequence of result of selection, offer of appointment was issued to the

R.W. Shetty

applicant on 01.12.1998 in order to report to Railway Staff College, Vadodara on 21.12.1998 but applicant failed to react this offer because he had already been selected in the IFS 1997 batch and he was undergoing training at Dehradun. Ultimately, offer of appointment was cancelled by the respondents vide letter dated 08.02.1999. Even after receipt of letter of cancellation, immediately no response was made by the applicant in order to join and report in the Railway Staff College, Vadodara but after about 2 months he moved an application on 01.04.1999. In order to revive his offer of appointment of the year 1997, and consequently after making certain clarifications, offer was revived and a letter was issued on 08.12.1999 in order to report at Railway Staff College, Vadodara on 10.01.2000, and accordingly the applicant joined on 10.01.2000. But as the respondents assured the applicant that he will be placed at the bottom of 1997 batch IRAS, and it has been argued by learned counsel for the applicant that the applicant joined only on the basis of letter dated 08.12.1999, on 10.01.2000. But this letter was issued by the Railway Board on 08.12.1999 was against the

W.S.

spirit of the O.M. and it was against the larger public interest. From earlier since 1978, DOP&T issued specific instruction in this connection and it was not expected from the respondents to issue a letter of offer of revival of appointment in violation of the O.M. issued by the DOP&T. Learned counsel for the applicant argued that much prejudice has been caused to the applicant by the subsequent act of the applicant, and the respondents were bound by the letter dated 08.12.1999. But in our opinion, this letter of 08.12.1999 has no legal sanctity because it is in violation of the O.M. of DOP&T. If a promise has been made by the respondents against the established rules on this point then it is not binding on the respondents. Hence, we are of the opinion that inter-se seniority of the applicant had rightly been fixed in view of the O.M. dated 06.06.1978 and subsequently amended in the year 1995, and this letter of 08.12.1999 is in violation of the OMs issued by the DOP&T. The respondents' Advocate argued that inadvertently the letter was issued on 08.12.1999, and as it was against the O.M. of DOP&T hence it has got no binding force. We are also of the opinion



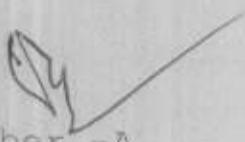
that as the candidates of 1998 batch had also joined prior to the joining of the applicant hence the inter-se seniority position has rightly been shown of the applicant. He has rightly been placed below of 1998 batch. It was due to in action and slackness of the applicant that he failed to react to the offer of appointment issued on 01.12.1998 and he failed to report to the Railway Staff College, Vadodara on 21.12.1998 and thereafter even offer of appointment was cancelled. The act of the respondents was perfectly in accordance with the existing rules

9. For the reasons mentioned above, we are of the opinion that as the inter-se seniority of the applicant has been determined having into account the O.M. issued by the DOP&T dated 06.06.1978 and subsequently amended vide O.M. of 1995 and the letter dated 08.12.1999 has no binding force because earlier to issue of letter dated 08.12.1999 some of the candidates of 1998 batch had already joined hence the seniority position of the applicant cannot be determined above to those candidates who had joined earlier in pursuance of examination of

Attn: Gopal

1998 batch. Whatever the respondents had done, it is in accordance with law, rules and public interest. O.A. lacks merit and is liable to be dismissed.

10. O.A. is dismissed. No order as to costs.


Member - A


Member - J

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/M.M/