

14 ✓
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

ORIGINAL APPLICATION NO. 592 OF 2001

Cuttack, this the 18th September, 2003

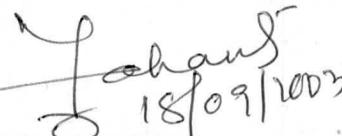
Shri Raj Kishore Dash, IPS Applicant

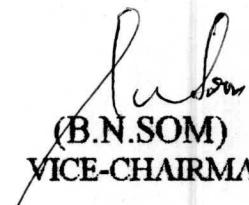
Vs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


18/09/2003
(M.R.MOHANTY)
MEMBER(JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

13

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

ORIGINAL APPLICATION NO. 592 OF 2001

Cuttack, this the 18th September, 2003

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

.....

Shri Raj Kishore Dash, IPS,
aged about 53 years,
son of late Lokanath Dash,
Plot No. B-1546, Sector 6,
CDA, Cuttack, at present a member
of the Indian Police Service and posted as
Superintendent of Police, Nayagarh, Dist. Nayagarh.....Applicant.

Vs.

1. Union of India, represented through its Secretary, Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training, New Delhi.
2. Union of India, represented through its Secretary, Government of India, Ministry of Home Affairs, New Delhi.
3. State of Orissa, represented through its Secretary to Government of Orissa, General Administration Department, Secretariat, Bhubaneswar, dist. Khurda.
4. Secretary to Government of Orissa, Home Department, Secretariat, Orissa, Bhubaneswar, dist. Khurda.....

Respondents

Advocates for the applicant - M/s A.K.Mishra, J.Sengupta,
D.K.Panda & P.R.J.Dash.

Advocates for the Respondents - Mr.K.C.Mohanty, GA
Mr.A.K.Bosc, Sr.CGSC

O R D E R
SHRI B.N.SOM, VICE-CHAIRMAN

This Original Application has been filed by Shri Raj Kishore Dash, a member of Indian Police Service (in short, "I.P.S.") to consider his case for promotion to I.P.S. retrospectively from the year 1992.

2. The applicant's case is that he initially joined Orissa Police Service (in short, "O.P.S.") in 1974. He was considered for the first time for promotion to I.P.S by the Selection Committee in the year 1992. Although his name was included in the panel, he was not actually promoted from that list due to lack of vacancies. The next meeting of the Selection Committee was held on 25.3.1993, and a select list was prepared consisting of three names including the name of the applicant. But this time also he could not be given promotion because of a direction from this Tribunal that no appointment should be made to the IPS cadre either from promotion quota or from direct recruitment quota until further orders. The next meeting of the Selection Committee was held on 22.3.1994 for preparing the select list for the year 1994. A select list of three names was prepared and the name of the applicant found place in

the list, as a result of which he was promoted to IPS with effect from 30.12.1994. The contention of the applicant is that although his name found place in the select list of 1992, he could not be promoted during that year due to paucity of vacancies. There was need for more officers in the IPS cadre because of which on 4.9.1992 the State Government had submitted a proposal to the Government of India for revision of the IPS cadre under Rule 4(2) of the Indian Police Service (Cadre) Rules, 1954 (hereinafter referred to as "Cadre Rules"). The Government of India, after due consideration of the proposal submitted by the State Government, revised the cadre strength of Orissa IPS cadre from 131 to 160, in which the promotion quota of IPS was increased from 31 to 38. The revised strength of IPS cadre of Orissa was given effect to from 29.3.1994. This triennial review of the Orissa cadre of IPS was, however, due with effect from the year 1992. The case of the applicant is that had the review been carried out as per the provisions of the statute during the triennial period of 1989-92, he could have been promoted to the IPS cadre in the year 1992, as his name was approved for appointment against substantive vacancies during the year 1992. He has submitted that by not carrying out the triennial review of the cadre strength of the State in the year 1992, promotion prospect, as due, was

denied to the applicant for no fault of his. He has also submitted that the language of Rule 4(2) of the Cadre Rules, as it stood prior to the 1995 amendment, is rather peremptory in nature. Having regard to the above facts and circumstances of the case and the rule position governing the issue, the applicant has approached the Tribunal to direct the Respondents to consider his case for promotion to the IPS cadre retrospectively from the year 1992 with all service and consequential benefits.

3. The Respondents have contested the Original Application by filing counters. While admitting the facts of the case, they have contested the submission made by the application that the provision of Rule 4(2) of the Cadre Rules regarding triennial cadre review is mandatory in nature. They have stated, after elaborately quoting Rule 4(2), that the Central Government is empowered under the law to re-examine the composition of each cadre at the interval of three years in consultation with the State Government concerned and may make such alteration therein as it deems fit and has the power to alter the strength of any cadre at any other time also. They have stretched this point further to say that the Rule only lays down a time frame for re-examination of the cadre strength but not necessarily of revision of the

✓

cadre strength at an interval of three years and that any such revision of the cadre can be carried at any other time, i.e., later than three years, also.

They have, therefore, concluded that the applicant cannot compel the Respondents for such a revision unless the Government of India considers such a step expedient in the interest of administration.

4. On the facts of the case, they have submitted that the strength of IPS cadre of Orissa was revised during 1989 and the next review was due during 1992 for which the State Government submitted a proposal to the Government of India in September 1992 and the latter thereafter revised the IPS cadre of Orissa by the notification dated 29.3.1994. In the circumstances, they have refuted the allegation made by the applicant that the cadre review proposal of the State Government was not acted upon by the Central Government. They have also refuted the averment made by the applicant that had the additional posts in promotion quota of IPS been created earlier by the Central Government, he could have got promotion to IPS during the year 1992. They have strongly urged that Rule 4(2) confers absolute right on the Central Government to alter the strength and composition of the IPS cadre at any other time and denied the allegation that there was any violation of the provision of the Regulation.

2

5. The Respondents have assailed the Original Application on the ground of limitation also. They have submitted that the applicant's cause of action for redressal of grievance, if there be any, arose as per his contention during the year 1992 and as such this Original Application filed after a long lapse of time of six years is barred by limitation. They have further stated that he did not make any representation soon after the selection was made in 1992. As such, the present Original Application, they submitted, is barred by delay and latches and hence has to be dismissed on this ground in limine.

6. We have heard Shri Aswini Kumar Mishra, the learned counsel for the applicant, Shri K.C.Mohanty, the learned Government Advocate appearing for the State of Orissa, and Shri A.K.Bosc, the learned Senior Standing Counsel for Respondent Nos. 3 and 4. We have also perused the records placed before us. Both sides have also filed written submissions.

7. By filing this Original Application, the applicant begs for an answer to his question whether the Central Government under Rule 4(2) of the Cadre Rules was duty bound to re-examine the strength and composition of the IPS Cadre of Orissa in consultation with the State Government not later than three years from 5.1.1989 when the last review of the cadre was made and to make such alteration therein as it

deemed fit. If the answer is in the affirmative, the point to be considered is whether on this account of delay in cadre review the applicant is entitled to seek retrospective benefit of the cadre restructuring. All the Respondents, by filing separate counters, have vehemently refuted that such a relief is available to the applicant under Rule 4(2) of the Cadre Rules.

8. Before we answer these two issues, we would like to deal with the question of limitation raised by the Respondents. Respondent Nos. 3 and 4 have stated that the applicant ventilated his grievance after a long lapse of six years. Respondent Nos. 1 and 2, echoing the same argument, have further elaborated that the averments made by the applicant that he had submitted a representation on 1.3.1995 to the State Government which did not dispose of the same and thereafter he had submitted a reminder on 14.11.2001 which also yielded no reply, are not true. They have submitted that in the first instance no such representation of the applicant was received by Respondent No.1 through Respondent No.3. That apart, the applicant, after submitting the said representation in 1995, did not pursue the matter for such a long time and approached the Tribunal only in the year 2001. Thus, the applicant having come forward for redressal of his alleged grievance after a lapse of more than six years

did not deserve any consideration and that law of limitation should apply with all its force.

9. The applicant in his Original Application has gone at length to explain how he could not approach the Tribunal earlier. Bringing to the notice of the Tribunal that redressal of grievances in the hands of the departmental authorities takes long time because ordinarily no priority is bestowed on these matters although the departmental authorities have been entrusted with the duty to dispose of appeals and petitions under the Service Rules expeditiously. By filing rejoinder, the applicant has submitted that he never delayed to ventilate his grievance to his controlling authority (Respondent No.3). He had submitted a representation on 4.3.1995 addressed to the Secretary, Home Department, Government of Orissa, with copy to the Special Secretary, Government of Orissa, General Administration Department, and Secretary to Government of India, Ministry of Home Affairs, New Delhi. He has also disputed the statement made by the Respondents that his representation did not reach the General Administration Department, as mentioned in page 7 of the counter. He has disclosed that the representation was submitted through proper channel which had been received by all concerned and that he possesses the original postal receipts confirming

27
dispatch of the letters to the Secretary, Government of India, Ministry of Home Affairs and the one addressed to the Secretary to Government of Orissa, General Administration Department. Thus he submits that this OA can not be assailed on the ground of limitation. He has also submitted that in case of a service dispute, the cause of action must be taken to arise not on the date of original adverse order, but on the date when the higher authority where the statutory remedy is provided passes his order.

10. We have given our anxious thoughts to the arguments of the rival parties regarding condonation of delay /question of limitation in this matter. On the face of it, the plea of the applicant that it takes a long time for the departmental authorities to redress the grievances is not a fairy story. The veracity of the submission made by the applicant may be seen from the fact that the Respondents could not have taken the decision dated 4.5.2002 on his representation dated 14.11.2001 had they not been in possession of his representation dated 4.3.1995. The letter dated 14.11.2001 was a mere reminder referring to his representation made on 4.3.1995. None of the issues raised in his representation dated 4.3.1995 was referred to/discussed in his letter dated 14.11.2001. In view of this fact of the case, we hold that the Respondents had actually received the

✓

representation filed by the applicant on 4.3.1995, sat over it for years and it was only on 4.5.2002 that they woke up from their slumber and issued the rejection letter at Annexure 3. After having sat over it for years ,it does not sound well in the mouth of the Respondents to oppose this Original Application on the ground of limitation. Otherwisc also, it is now well settled in law that in service matters, the Court should not refuse to hear grievances of the employees pointing out mere technical deficiencies or some extra-legal issues. We, therefore, disallow the contention of the Respondents that this Original Application is barred by limitation.

11. Now we would proceed to answer the two issues raised in this Original Application by the applicant as noted by us at paragraph 7 above. The applicant's plea is that Rule 4(2) of the Cadre Rules provides that the Central Government "shall" re-examine the strength and composition of the cadre at interval of every three years and that the word "shall", as uscd in this Rulc, is not dircctory but mandatory in character and since it is mandatory, violation of this Rule has created injustice to him. He has lost his chance of being promoted to the IPS cadre from the year 1992. The Respondents, on the other hand, have drawn our notice to the first proviso to Rule 4(2) that "nothing in this

sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time" (emphasis supplied). By referring to the words "at any other time", they have emphasized that the Central Government may alter the strength even after three years also, otherwise the legislature would not have inserted this proviso. Following this line of argument, the Respondents have stated granting that in this case the next cadre review after 5.1.1989 was not done in 1992 but was done in 1994, that does not constitute an infringement of Rule 4(2), because, according to the provisions of that Rule, the strength and composition of the cadre can be altered either once in every three years, or at any other time.

12. The above contentions of the rival parties call for a purposive and harmonious interpretation of Rule 4(2). We now propose to do the same. The applicant, reading from the first paragraph of Rule 4(2) of the Cadre Rules, is convinced that the Central Government is duty bound to re-examine the strength and composition of the cadre at an interval of every three years. It cannot exceed this time limit. On the other hand, relying on the proviso to sub-rule (2) of Rule 4 of the Cadre Rules, the Respondents are convinced that the rule provision offers reason to the Central Government to be flexible and is not bound by any rigid time

frame to re-examine the strength and composition of any cadre. Surely, only one of these two contentions will be correct. As is well known, a statute must be interpreted having regard to the purport and object which it seeks to achieve. And to make a purposive and meaningful interpretation of a statute, we would like to recall the following observation of Justice Frankfurter in the case reported in *47 Columbia LR 527 p.538*, as noticed by the Hon'ble Supreme Court in the case of *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. And others*, (2000 (7) SCC 357):

“Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. The aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose”

Their Lordships of the Hon'ble Supreme Court in the case of *Reserve Bank of India v. Peerless Co.*, 1987 (1) SCC 424, has said:

“Interprctation must depnd on the test and the content. They are the basis of interpretation. One may well as if the text is the tenure; context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by

such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to any as to fit into the scheme of the entire Act. No part of a statute and no word of statute can be construed in isolation, statutes have to be construed so that every word has a place and every thing is in its place....."

In this case, the purpose of legislation was to empower the Central Government to carry out re-examination of the strength and composition of the IPS cadre in consultation with the State Government at interval of every three years. We find that sub-rule (2) of Rule 4, while prescribing that such a re-examination shall be done at an interval of every three years, uses the word "shall". The word "shall", as we know, has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favour of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced. This is the meaning of the word "shall" given in *Black's Law Dictionary (Fifth Edition)*. On the other hand, the proviso also uses the word "shall" when it says that the Central Government has the power to alter the strength and composition of any cadre at any other time. If the word, "shall" in the proviso will also carry the same meaning as

we have noted earlier, then there would be contradiction, rather an impasse, which will destroy the very purpose of this legislation. Fortunately, referring to *Black's Law Dictionary (Fifth Edition)*, we find the word "shall" has another meaning on certain circumstances/situations. This word may also be construed as merely permissive or directory (as equivalent to "may"), to carry out the legislative intention and in cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense. It is thus clear that whereas by using the word "shall" in the sub-rule, the law makers gave a command to the Central Government to re-examine cadre strength at an interval of every three years in consultation with the State Government concerned and such a provision is enforceable, being in public interest. On the other hand, the meaning of the word "shall" in the proviso is purely discretionary and permissive so that the Central Government, if occasion arises, or due to some unforeseen circumstances, if need be, can alter the strength and composition of any cadre earlier than three years, and this power is exercised not in consultation with the State Government, but is exercised by the Central Government in its own discretion. We have also read the provisions of Rule 4(2) of the Cadre Rules "with the glasses" of the statute makers and in the context in which the text

was prepared. Having done that we have no doubt that said provision in Rule 4 (2) was made to ensure that the strength and composition of an All India Service is always monitored in a time bound manner. If this purpose of the law makers is understood and appreciated, then there would be no doubt to hold that the time frame of three years is maximum and inviolable. We are, therefore, unable to agree with the contention made by the Respondents that the Central Government has the inherent power to carry out cadre review at any time even after lapse of three years. Our finding is that the time frame ^{is} maximum of three years and this condition is mandatory and enforceable.

13. The other issue to be answered in this Original Application is, whether the review of the strength of the cadre can be given retrospective effect. This question has been raised and answered by the Courts, including the Apex Court, earlier also. In this regard, the learned counsel for the applicant has drawn our notice to the Apex Court's decision in the case of *S.Ramanathan v. Union Bank of India and others*, 2001 SCC (L&S) 340, which answers the issue wholly and therefore, we propose to discuss the decision of the Apex Court at length here. In that case, a common question of law concerning interpretation of Rule 4(2) of the Cadre Rules, as it stood prior to 1995 amendment, was considered. The appellants therein were

promoted to I.P.S. from State Police Service consequent on triennial review of the cadre under Rule 4(2) of the Cadre Rules, which was due in 1987 but was initiated in 1989 and completed in 1991 with a finding that there was an increase in the cadre strength. In view of such increase in the cadre strength, the chances of promotion of the appellants to IPS from an earlier point of time stood accelerated and therefore, they approached the Central Administrative Tribunal for a direction, but were unsuccessful. The Applications did not succeed on the grounds that the situation which could have been made available in 1987 could not be brought back by a direction for reconsideration and that neither the equity demanded such a direction, nor was it appropriate for the Court to unsettle the settled service position. The Apex Court held in that case that the prayer for re-consideration of the case of promotion to the IPS cadre on the basis of the additional vacancies created, if denied, would be inappropriate if the appellants were otherwise entitled to the same. Their Lordships, at the same time, issued the caution that while exercising the discretionary jurisdiction, the Courts must examine the question of administrative chaos or unsettling the settled position. Holding that the language of Rule 4(2), as stood prior to the 1995 amendment, is peremptory in nature and though an infraction of the aforesaid provision does not confer a vested right with an employee for

3

requiring the Court to issue mandamus, nonetheless in case of such infraction, if no explanation is forthcoming from the Central Government, indicating the circumstances under which the exercise could not be undertaken, the Court would be within its jurisdiction to issue appropriate direction depending upon the circumstances of the case. At the end, Their Lordships observed: "When certain power has been conferred upon the Central Government for examining the cadre strength, necessarily the same is coupled with a duty to comply with the requirements of law." As a result of this decision, the State Government of Tamil Nadu granted retrospective promotion to the appellants from the year 1987 on a reconsideration of the appeals on merit.

14. Shri A.K.Bose, the learned Senior Standing Counsel, appearing on behalf of Respondent No.1, drawing our notice to the Apex Court judgment in the case of *Tamil Nadu Administrative Service Officers Association and another v. Union of India and others*, AIR 2000 SC 1898, opposed the contention of the applicant that the Court could direct the Respondents to create the cadre posts from an anterior date. He further submitted that the Apex Court has ruled in that case that "the decision to fill up a vacancy or not vests with the employer who for good reasons, be it administrative, economical or policy, decide not to fill up such post(s)".

✓

Therefore, Shri Bose submitted that the applicant cannot claim any relief with retrospective effect solely on the ground of delay in the cadre review and that the right to be considered for promotion arises only the date of encadrement which having been done with effect from 1995 only, the applicant cannot, as a matter of fact, ask for retrospective promotion.

15. We have carefully considered the arguments placed on record by the Respondents as also the oral submissions of the learned Senior Standing Counsel. We, however, hold that in the facts and circumstances of the present Original Application filed by the applicant, our decision in the matter will be governed more by the judgment of the Apex Court in *S.Ramanathan's case (supra)*, because, as in that case, the cadre review of IPS cadre of Orissa was under Rule 4(2) of the Cadre Rules, which though due in 1992 was given effect to from March 1994. The applicant's grievance is, had the processing of the triennial cadre review under Rule 4(2) been completed in 1992, he could have got the benefit of officiating in IPS from that year. The Respondents, more than saying that the Central Government was authorized under the proviso to Rule 4(2) to carry out triennial cadre review either at the end of three years or at any other time, have not placed any material on record showing reasons for the delay in carrying out such cadre review, nor did they put forward any reason to sustain their

39 apprehension that if any retrospective effect is given to the notification dated 29.3.1994 enhancing the promotion quota of Orissa cadre of IPS, it would lead to administrative chaos. We have already found that the proviso to Rule 4(2) does not actually give any power to the Central Government to carry out the triennial cadre review of IPS cadre at any time as they find it convenient. We have also found that Their Lordships in *S.Ramanathan's case (supra)* have made the same observation that when power has been conferred upon the Central Government for examining the cadre strength, the latter was duty bound to comply with the requirement of law and that requirement is mandatory under Rule 4(2), as it stood prior to the 1995 amendment, to carry out the triennial cadre review at interval of every three years. In the circumstances, our finding is that the Respondents, in this case, were under obligation of law to carry out the cadre review of Orissa IPS cadre in the year 1992.

16. In view of the above law position, we direct the Respondents to re-consider the question of promotion of the State Police Service officers to IPS on the basis of the re-determined strength of the cadre, by ante-dating the restructuring the cadre strength as notified in the letter dated 29.3.1994 and if, on such a reconsideration, relief would be available to the applicant

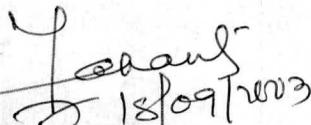
bc

34

20

for promotion to the IPS against the promotion quota, the same be given to him with all consequential service benefits.

17. Accordingly, this Original Application succeeds. No costs.


18/09/2003

(M.R. MOIANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

AN/PS