

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No.78/2009
with
Misc. Application No.40/2009**

Jodhpur this the 27 day of February, 2014

Reserved on 11.02.2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J),
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Ajeet Singh Singhvi S/o Shri Sajjan Chandji Singhvi, retired from the State Cadre of I.A.S., aged about 74 years, R/o Sadulganj, Bikaner.

.....Applicant

Mr. Ajeet Singh Singhvi, applicant, present in person.

Versus

1. The Union of India through the Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, Government of India, New Delhi.
2. The State of Rajasthan through the Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur.

.....Respondents

Smt. K. Parveen, counsel for respondent No.1.

Mr. Kamal Dave, counsel for respondent No.2.

ORDER

Per K.C.JOSHI, Member (J)

✓ This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 for seeking directions upon the respondents to implement the order dated 09.02.1993 passed by the Central Administrative Tribunal, Jodhpur Bench, in T.A. no. 05/1992 and for granting all the consequential benefits flowing from the order dated 09.02.1993, which has not been implemented in its entirety.

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2. The brief facts of the case, as averred by the applicant, are that the applicant was appointed to the Rajasthan Administrative Service in the year 1958 and his name was included in the select list of IAS in the year 1978, but as vacancies were not available, he could not be appointed to the IAS. The name of the applicant was again included in the select list of IAS prepared on 22.12.1980 and on 05th March, 1984, the applicant was promoted and started officiating in the cadre post of IAS under Rule 9 of the IAS Cadre Rules, 1954. It has been averred that on 18.01.1985, the State Government wrote to the Government of India to notify the appointment of the applicant to the IAS against one of the available six clear vacancies, but the Government of India declined to issue the notification of the appointment of the applicant to the IAS under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 on the wholly illegal and untenable ground that the appointment of Shri G.P. Nagar, senior to the applicant included in the same select list, being not possible due to the pendency of departmental inquiries against him and therefore the appointment of the applicant was also not possible because the sequence of the names included in the select list could not be disturbed. It has been further averred that on 25.02.1986, the applicant filed writ petition before the Rajasthan High Court praying for a direction to the Union of India for issuing notification regarding his appointment to the IAS and the applicant continued to work in the Senior Scale Cadre post of IAS as per interim order of the Hon'ble High Court.

Subsequently, the Writ Petition was transferred to the Central Administrative Tribunal, Jodhpur Bench, registered as TA No.05/1992, which was decided by the order of the Central Administrative Tribunal dated 09th February, 1993 in favour of the applicant and a copy of judgment has been annexed with this OA as Annexure-A/1. The operative portion of the judgment dated 09.02.1993 passed in TA No.05/1992 is as under:-

"19. In view of the above discussion, we allow this application and direct that the Central Government shall issue within 3 months of this order the requisite notification under Regulation 9 of the Promotion Regulations for appointment of the applicant to the State Cadre of IAS with effect from 05th March, 1984 or the date from which any officer senior to him in the select list of 1980 was appointed to IAS, whichever is later. The applicant will be entitled to all consequential benefits. Parties to bear their own costs."

3. It has been further averred in the OA that the officer senior to the applicant who was appointed to the IAS out of the 1980 select list was Shri Ganpat Ram Yadav and he was appointed to the IAS vide notification dated 08.06.1984 issued by the Government of India. Thus, the applicant was entitled to get his notification for appointment to the IAS with effect from 05.03.1984 or with effect from 08.06.1984 in terms of the above judgment of the CAT, Jodhpur Bench. However, the Government of India issued the notification of the appointment of the applicant to the IAS w.e.f. 21.03.1988 vide order dated 07.06.1993, which was not in accordance with the judgment of the CAT. It has been further averred that the Government of Rajasthan preferred a Special Leave Petition against the order of the Central Administrative Tribunal dated 09th February, 1993, which was decided by the Hon'ble Supreme Court on 11.10.1996 and the Hon'ble Supreme Court declined to interfere with the said judgment of the CAT. A copy of

the judgment of the Hon'ble Supreme Court has been annexed with this OA as Annexure-A/4. The claim of the applicant is that the select list of 1980 included the name of Shri Ganpat Ram Yadav at serial No.21, Shri Ganesh Prasad Nagar at serial No.22, Shri Chhagan Lal Jain at serial No.23, Shri Ajeet Singh Singhvi (Applicant) at serial No.24 and Shri Ratan Singh Singhi at serial No.25 and out of which Shri Ganesh Prasad Nagar (serial No.22) was never appointed to the IAS as he was retired compulsorily and Shri Chhagan Lal Jain (serial no.23) was also not appointed to the IAS out of the select list of 1980 but was appointed to the IAS out of the Select List of 1988, which is not relevant to the order passed by the CAT. It has been further averred that out of the select list of 1980, the last person senior to the applicant, appointed to the IAS was Shri Ganpat Ram Yadav who was appointed to the IAS as on 8th June, 1984 and therefore the respondent No.1, Union of India, was required to issue notification for appointment of the applicant to the IAS w.e.f. 08th June, 1984 in terms of the order of the Central Administrative Tribunal dated 09th February, 1993. However, the respondent No.1 issued the notification of the appointment of the applicant under Regulation 9 of the IAS (Appointment by Promotion) Regulations, 1955 w.e.f 21.03.1988 on the ground that Shri Chhagan Lal Jain was appointed to the IAS from that date. It has been further emphasized that as Shri Chhagan Lal Jain was not appointed out of the select list of 1980 but was appointed out of the select list of 1988, there was no question of comparing the case of the applicant with that of Shri Chhagan Lal Jain for the purpose of

implementation of the order of the CAT. Shri Chhagan Lal Jain did not seek any remedy when appointment was not given to him out of the select list of 1980 and applicant cannot be made to suffer only because Shri Chhagan Lal did not seek any relief. Thus, in view of the clear directions of the Central Administrative Tribunal vide order dated 09th February, 1993 that the applicant be appointed to the IAS w.e.f. 05th March, 1984 when he started officiating in the IAS or with effect from the date from which any officer senior to him in the select list of 1980, was appointed to the IAS, whichever is later, he should have been appointed from 08th June, 1984, the date on which Shri Ganpat Ram Yadav the last person senior to the applicant to be appointed from the select list, but instead of that the Government appointed the applicant to the IAS w.e.f. 21.03.1988 and was also assigned the allotment of year 1979 instead of 1974 which was his due as Shri Ganpat Ram Yadav was assigned the allotment year of 1974.

4. It has been further averred in the OA that the Government of Rajasthan vide order dated 25.06.1993 posted the applicant as Special Secretary to the Government of Rajasthan, which is a promotional post in the Selection Grade of IAS, but the selection grade salary was not granted to him.

5. Subsequent to the judgment of the Apex Court in the SLP on 11.10.1996 the applicant submitted number of representations to the Government of India as well as to the State Government to issue the notification of his appointment in accordance with the

order of the CAT dated 09th February, 1993, but, when no response was forthcoming, the applicant filed a Contempt Petition bearing No.08/1998 before the Central Administrative Tribunal, Jodhpur Bench, on 28.04.1997 and during the pendency of the said contempt petition, the State Government on 23.09.2000, issued pay fixation orders of the applicant in the IAS pay scale (Annex.A/9), but the same were in contravention of the order of the Central Administrative Tribunal because the order of the pay fixation was just a notional order though the applicant had continuously worked on IAS cadre posts from 05.03.1984 till his retirement on 30.06.1993 and further the cash payment has been authorized from 09.05.1994 and this date is absolutely irrelevant, and further he was equated with his junior Shri Ratan Singh Singhi, who was not even appointed to the IAS from the Select List of 1980. Subsequently, vide Government orders dated 26.07.2005, the applicant was appointed in the selection grade from 01.07.1992, selection grade pay has not been paid to the applicant.

6. It has been further averred that the contempt petition bearing No.08/1998 was dismissed by the Central Administrative Tribunal vide its order dated 28th September, 2001, as being time barred and also on merits, though, it is a settled law that once the Court is dismissing any petition or appeal as being time barred, it should restrain itself to express its opinion on merits of the case. The Judgment of the CAT in TA No.05/1992, decided on 09th February, 1993, had already attained finality right upto the Hon'ble Supreme Court, therefore it was incumbent upon the Tribunal to restrain

from observing anything on merits of the case. [The judgment of the CAT dated 28.09.2001 passed in CP No.08/1998 was submitted by the applicant during the course of hearing and be kept on record].

7. It has been averred in para No.4.17 of the OA that the applicant again preferred an SLP against the judgment dated 28.09.2001 passed by the CAT in CP No.08/1998, but the same was withdrawn by him on 04.03.2002 as per the legal advice given to him by his counsel who advised him to approach the Hon'ble High Court for issuing appropriate writ, order of direction to ensure and expedite compliance of the judgment of the Tribunal dated 09th February, 1993.

8. It has been further averred that the Department of Personnel, Government of Rajasthan, never responded to the representations made by the applicant and therefore in April, 2002, the applicant met the Minister for Department of Personnel (DoP) of the State Government and submitted a memorandum and the Hon'ble Minister discussed the matter with the Secretary, DoP and the applicant was assured that due compliance of the order of the CAT dated 09th February, 1993 will be made early but nothing was done. The applicant then approached the Hon'ble Rajasthan High Court as he got no response from the State Government and filed a S.B. Civil Writ Petition No.1945/2004 (*Ajeet Singh Singhvi v. Union of India & Ors.*), but the same was dismissed on 15.04.2008 on the ground that the jurisdiction to adjudicate the matter lies with the

Central Administrative Tribunal, Jodhpur Bench, provided under the Administrative Tribunals Act, 1985 and liberty was given to him to avail the alternative remedy available to him. The said judgment of the Rajasthan High Court has been annexed with this OA as Annexure-A/12. It has been further averred that during the pendency of the writ petition, the State Government passed certain orders in quick succession i.e. on 26.07.2005, 30.07.2005 and 09.08.2005, 28.09.2006 purporting to fix salary of the applicant, which were more or less a futile exercise because these orders did not take any account of the fact that the applicant has not been taken as appointed to the IAS on 05.03.1984 or 08.06.1984 as per the orders of the Tribunal dated 9th February, 1993 and he has not been given any consequential benefits. Thus, as his appointment order and subsequent pay / salary orders are not in accordance with the order of the Central Administrative Tribunal dated 09th February, 1993 and on the basis of order of the Hon'ble High Court dated 15.04.2008 in S.B. Civil Writ Petition No.1945/2004, the applicant has approached this Tribunal claiming the following reliefs:-

- “(i) by an appropriate order or direction, the respondent be directed to implement the judgment and order dated 09.02.1993 (Annexure-A/1) by directing the respondents to appoint the applicant in the IAS w.e.f. 05th March, 1984 or from 08th June, 1984 when his senior Shri G.R. Yadav was appointed to the IAS cadre from the select list of 1980 with all consequential benefits.
- (ii) by an appropriate order or direction the respondents be directed to confer the year of allotment of the applicant in the IAS as 1974 vis-à-vis Shri G.R. Yadav whose year of allotment is of the year 1974.
- (iii) by an appropriate order or direction, the respondents be directed to confer the benefits of selection grade of IAS and Super Time Scale of IAS to the applicant from the year 1987 to 1990 on completion of 13 and 16 years respectively from the said year of allotment with all consequential benefits.

- (iv) by an appropriate order or direction, the respondents be directed to made the payment of arrears of salary to the applicant in the IAS pay scale w.e.f. 05.03.1984 when he started officiating on the cadre post of IAS and also to fix him in the IAS selection scale pay and super time scale pay from the year 1987 and 1990 respectively on his completion of 13 and 16 years from the year of his allotment in the IAS and to make payment of arrears accordingly.
- (v) by an appropriate order or direction, the respondents be directed to make payment of arrears of IAS salary as well as arrears of pensionary benefits along with interest @ 24 % per annum from the date the same had become due till the date of payment.
- (vi) by an appropriate order or direction, the respondents be directed to make the payment of cost of litigation and compensation of Rs.1 lac for the harassment caused to him on account of litigating his cause and on account of the fact that the respondents have failed to implement the judgment and order dated 09th February, 1993.
- (vi-a) by an appropriate order or direction, the pay fixation orders dated 23.09.2000, 30.07.2005, 19.08.2005 & 09.08.2005 may kindly be modified to the extent that the applicant is entitled to be conferred arrears of salary w.e.f. 05.03.1984 and to determine 1974 as his year of allotment in the service and, further to grant him fixation in the Selection Grade and Super Time Scale of the IAS on completion of 13 and 16 years of service w.e.f. 1987 and 1990 respectively and to make him the payment of arrears accordingly with all the consequential benefits.
- (vii) any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

9. The applicant has also filed a Misc. Application No.40/2009 for condonation of delay in filing of the OA and in which he has mentioned the reasons for delay as improper implementation of the order of the CAT dated 9th Feb., 1993, his pursuing the matter before Hon'ble High Court & Hon'ble Apex Court as well as some reasons pertaining to his own and family members illness.

10. In the Additional Affidavit filed by the respondent No.1, after making a reference to the IAS (Recruitment) Rules, 1954 and the IAS (Appointment by Promotion) Regulation 1955 and the process of appointment by promotion to the IAS from the State Civil Services, the averments made by the applicant in OA, have been denied and it has been submitted that the applicant Shri Ajeet Singh Singhvi is an officer of the State Civil Service (SCS) of

Rajasthan and the Selection Committee which met on 22nd December, 1980 for selection of SCS officers of Rajasthan for inclusion in the Select List of 1980 for promotion to IAS had inter-alia included his name at serial No.24. The Select list was approved by the UPSC on 3rd April, 1981 and 30 SCS officers were included in the select list. It has been further averred that the State Government vide its letter dated 19th January, 1985 requested the Government of India to notify the appointment of S/Shri Chhagan Lal Jain, Ajeet Singh Singhvi (applicant) and Ratan Singh Singhi (whose names were included at serial No.23, 24 and 25 respectively in the aforesaid select list) to IAS against the available six clear vacancies. The Department did not agree with the proposal of the State Government on the ground that the appointment of Shri Ganesh Prasad Nagar at serial No.22 was not possible due to pendency of departmental enquiry against him and appointment of above three officers including Shri Ajeet Singh Singhvi (applicant) would have resulted in disturbing the sequence of names included in the Select list. It has been further averred that in pursuance of the judgment of the CAT dated 09th February, 1993 in TA No.05/1992, the Department vide notification dated 07th June, 1993 appointed Shri Ajeet Singh Singhvi (applicant) to the IAS w.e.f. 21st March, 1988, i.e. from the date when Shri Chhagan Lal Jain, included immediately above him at serial No.23 in the select list prepared on 22nd December, 1980, was appointed to the IAS. Refuting the claim of the applicant to be appointed from 05th March 1984 or 08th June, 1984, when his senior Shri Ganpat Ram Yadav was appointed

to IAS cadre from the select list of 1980, it has been averred that Shri Chhagan Lal Jain who was immediate senior to Shri Ajeet Singh Singhvi (applicant) in the said select list was not appointed to IAS and therefore the applicant could not be appointed ahead of Shri Chhagan Lal Jain. As Shri Chhagan Lal Jain came to be appointed to IAS in the year 1988 on the basis of select list of 1988 and therefore it was but logical that the applicant is appointed to the IAS on or after the date of appointment of Shri Chhagan Lal Jain. Therefore, action of the department in appointing the applicant w.e.f. 21st March, 1988 vide notification dated 07th June, 1993 is strictly in accordance with the Regulation 9 (1) of IAS (Appointment by Promotion) Regulations, 1955.

11. By way of reply, the respondent No.2 (State Government) has also denied the claim of the applicant and raised the preliminary objection on the ground of limitation and averred that the 'Act of 1985' incorporates mode of execution of the order of the Tribunal under Section 27 of the 'Act of 1985', and in case the applicant is aggrieved of non-implementation of the judgment, remedy by way of OA cannot be the mode for redressal of his grievance when specific provision for execution of judgment is provided under the Act itself. It has been highlighted that admittedly the judgment which has been sought to be implemented is of 09.02.1993 and the OA has been preferred in the year 2009. It has also been averred that the OA is also hopelessly time barred because as per Section 21 it can be filed within one year from the date of passing of final order and in the eventuality of representation being preferred and

no final order is passed within a year after expiry of a period of further 6 months, but the OA has been filed much beyond the prescribed period of limitation.

12. Replying to the facts of the case, it has been averred that the applicant has been appointed as RAS in the year 1958 and the name of the applicant was included in the select list prepared under Regulation 7 of Indian Administrative Service (Appointment by Promotion) Regulations, 1955, on the recommendations of the meeting of the Selection Committee which was held on 22.12.1980 and approved by UPSC on 03.04.1981. Applicant's name was shown at serial No.24 in the select list of 27 officers, and on 19.01.1985, the State Government wrote a letter to the Government of India stating that there are 6 clear vacancies in the IAS cadre to be filled in by promotion from State Civil Service Officers included in the select list. The State Government recommended names of Shri Chhagan Lal Jain, Shri Ajeet Singh Singhvi (applicant) and Shri Ratan Singh Singhi, whose names appear at Serial No.23, 24 and 25 respectively in the select list. It has been further averred that the applicant had started officiating in the cadre post of IAS w.e.f. 05.03.1984 under Rule 9 of the IAS (Cadre) Rules, 1954. The Government of India on 01.02.1985 wrote a letter to the State Government stating that the name of Shri G.P. Nagar appearing at serial No.22 in the select list had not been recommended by the State Government and further as his name was included in the select list unconditionally, there was no question at this stage to keep a post reserved for him and appoint his juniors and added that

the State Government may approach the UPSC for special review of the select list for deletion of name of Shri G.P. Nagar or making it conditional. The State Government referred the matter to the UPSC vide letter dated 05.08.1985, but UPSC vide letter dated 03.09.1985 declined to delete the name of Shri Nagar under second proviso to Regulation 7(4) of the IAS Promotion Regulation as this proviso does not cover a case where there are only allegations of misconduct and the chargesheet is yet to be served. Thereafter the State Government sent a revised proposal to the Government of India on 07.12.1985 in which the name of Shri G.P. Nagar was also recommended for promotion and a request was made for issuance of notification regarding appointment of the applicant and others to the IAS cadre. Before a decision by the Government of India could be taken the meeting of the next Selection Committee was held on 18.12.1985 but the name of the applicant did not appear in the select list due to his assessment simply as 'good'. The select list prepared on 18.12.1985 was quashed by the Central Administrative Tribunal, Principal Bench, New Delhi vide order dated 21.10.1987 and also in the Review Selection Committee meeting held on 29-30 January, 1988, the name of the applicant did not appear in the select list for the reason that his assessment remained simply as 'good' and, as a result S/Shri P.S. Maheshwari, S.S. Joshi, Prageshwar Tiwari and Chhagan Lal Jain who were senior to the applicant in the select list were given appointment to the IAS w.e.f. 21.03.1988. It has been further averred that the claim of the applicant that he should be appointed from the date of appointment of Shri G.R.

Yadav i.e. from 08.06.1984, is not substantiated, because there was no appointment from the select list of 1980 after appointment of Shri G.R. Yadav. It has been further averred that the applicant is not the only person who could not be appointed from the date of Shri G.R. Yadav and at least two more persons are there, viz. Shri G.P. Nagar and Shri Chhagan Lal Jain who are senior to him in the select list of 03.04.1981 and Shri Chhagan Lal Jain is also senior in subsequent select list prepared on 05.02.1988. In the select list of 05.02.1988 Shri Ratan Singh Singhi (serial No.7) is just below Shri Chhagan Lal Jain (serial No.6) and in compliance of order of CAT Jodhpur Bench dated 09.02.1993 in TA No.05/1992, the name of the applicant was deemed to have been inserted between serial No.6 and 7 on the basis of eligibility list, and accordingly he was appointed to the IAS w.e.f. 21.03.1988 by Government of India's notification dated 11.06.1993. It has also been averred that the pay fixation order has been issued taking into account the position of his junior Sh. R.S.Singhi in the IAS cadre, as per rules and other orders regarding selection grade have been issued bearing the allotment year of 1979, which has been assigned as per notification of the Government of India vide letter dated 15th July, 1993 (Annex.-A/7). The benefits accruing from the pay fixation stand disbursed to the applicant as per his entitlement in consonance with the rules. On the said basis, the State Government has denied the claim of the applicant to be appointed with effect from the date of Shri G.R. Yadav i.e. 08.06.1984 and to any related consequential claim arising from that. It has been submitted that the judgment of

this Tribunal dated 9th Feb., 1993 stands complied with, the Contempt Petition filed by the applicant has been dismissed for delay as well as merit and the SLP preferred by the applicant has been withdrawn and the applicant has no ground to raise his grievances at this stage and have prayed for dismissal of the OA.

13. In the rejoinder to the additional affidavit filed by the Union of India (respondent No.1), the applicant while reiterating the same facts and assertions as averred in the OA has stated that the averment of the replying respondent, that the applicant could not have been appointed to the IAS on the basis of 1980 select list is in total disregard of the clear and categorical direction of this Tribunal and that Shri Chhagan Lal Jain, who was immediate senior to the applicant was not appointed to the IAS out of the select list of 1980 but was appointed to the IAS out of the select list of 1988. The fact that he did not seek any relief does not, in any way, adversely affect the claim of the applicant and as Shri Ganpat Ram Yadav at serial No.21 was the last person senior to the applicant appointed to the IAS out of the select list of 1980 w.e.f. 08.06.1984, therefore, his claim is justified and the Tribunal had issued the clear direction that the applicant should be appointed from 05.03.1984 or with effect from the date any officer senior to him (and not the immediate officer senior to him), and as Shri Ganpat Ram Yadav was the last senior person appointed to the IAS out of the select list of 1980, therefore, in terms of the judgment of the Tribunal dated 09th February, 1993 in TA 05/1992, the applicant is required to be appointed w.e.f. 08.06.1984 with all consequential benefits.

14. In rejoinder to the reply filed by the respondent No.2 i.e. State Government, the applicant has denied that the OA is time barred and emphasized that continuous wrong has been committed by the respondents and therefore the objection regarding limitation taken by the respondents is misconceived and baseless as there is continuing cause of action. As regarding execution of order dated 09th February, 1993 is concerned, it has been submitted that the Writ Petition was filed before the Hon'ble Rajasthan High Court for implementing the order passed by the Tribunal, which was dismissed on the ground that the remedy is available to the applicant before the Tribunal and the liberty was granted to the applicant to avail the remedy before the Tribunal. The order of High Court was passed on 15th April, 2008 and the OA was filed on 17th March 2009 and some delay was on account of medical problems and MA for condonation of delay has already been filed. It has been further averred that the applicant is waiting for more than 12 years for the benefits to be released and that the contention of the respondents that they have complied with the order passed by the Hon'ble Tribunal by inserting the name of the applicant in the select list of 1988 is baseless and incorrect and as Shri Ganpat Ram Yadav was last person who was appointed out of the select list of 1980 and therefore, the same benefits have to be conferred upon the applicant as directed by the Tribunal vide order dated 09th February, 1993 and appointment, year of allotment, pay, grant of higher grades and promotions and all pay and pensionary benefits be granted accordingly.

15. Heard. Shri Ajeet Singh Singhvi, applicant, present in person, while reiterating the points brought out in his OA and rejoinders, argued that on basis of the Select List of 1980, he was appointed to the IAS on 05th March, 1984 in officiating capacity under Rule 9 of the IAS (Appointment by Promotion) Regulations, 1955. On 19th January, 1985 the State Government wrote to the Government of India for appointment of three officers from the 1980 select list viz., Shri Chhagan Lal Jain (Sl.No. 23), Shri Ajeet Singh Singhvi (Sl.No.24) (applicant) and Shri Ratan Singh Singhi (Sl.No.25) against six clear vacancies, but the Government of India did not agree to the said proposal vide letter dated 01.02.1985 because the State Government had not recommended the name of Shri Ganesh Prasad Nagar whose name stood at Serial No.22 of the Select List of 1980 and was placed higher than Shri Chhagan Lal Jain and suggested the State Government may move to the UPSC for deletion of his name or making its conditional. The State Government wrote to the UPSC on 05.08.1985, but the UPSC vide letter dated 03.09.1985 declined to delete the name as it would not be in accordance with proviso to the relevant rules as there were only allegations of misconduct without chargesheet. Thereafter the State Government sent a revised proposal on 07.12.1985 including the name of Shri G.P.Nagar and others including the applicant but before any response could be received from the Government of India, the next meeting of the Selection Committee was scheduled on 18.12.1985. It was contended by the applicant that the fact that Shri Ganesh Prasad Nagar's name was not included in the first

proposal of the State Government and later included but with the remark that a charge sheet has been served on him, could not have been a basis for his being deprived of being appointed to the IAS as the applicant was selected in the select list of 1980 and there were clear vacancies. Thus, the respondents took their own time of about 10 months with regard to a clear recommendation and appointment and later when the select list was prepared in the next meeting held on 19th February, 1985 the same was challenged before the Principal Bench of the CAT and was quashed vide order dated 21.10.1987. Thereafter, the Review Selection Committee met and the select list of 1988 was prepared as at Annexure-A/6. It was contended that as the applicant did not get his appointment order on the basis of 1980 select list, he approached the Hon'ble High Court in S.B. Civil Writ Petition on 25th February, 1986 and just prior to his filing of the writ petition, a DO letter from Hon'ble Chief Minister of Rajasthan was also received by the DoPT seeking the appointment of the officers selected in the 1980 select list but there was no response from the Government of India. The Writ Petition filed by the applicant was subsequently transferred to the CAT which was registered as TA No.05/1992 and during the pendency of the Writ Petition before the Hon'ble High Court, the applicant continued in the IAS on the basis of the interim relief passed by the Hon'ble High Court. The CAT in its order dated 09th February, 1993 made a comprehensive, exhaustive and reasoned analysis of the issue and came to the conclusion at para No.19 of the order, as under:-

"19. In view of the above discussion, we allow this application and direct that the Central Government shall issue within 3 months of this order the requisite notification under Regulation 9 of the Promotion Regulations for appointment of the applicant to the State Cadre of IAS with effect from 05th March, 1984 or the date from which any officer senior to him in the select list of 1980 was appointed to IAS, whichever is later. The applicant will be entitled to all consequential benefits. Parties to bear their own costs."

16. It was further contended by the applicant that the State Government filed an SLP bearing No.9522 of 1993 against the order of the CAT, but that became infructuous vide order dated 11.10.1996 (Annexure-A/4) and therefore, the judgment of the CAT Jodhpur dated 09.02.1993 attained finality. However, the State Government vide its order dated 07.06.1993 (Annex.A/3) appointed the applicant as IAS w.e.f. 21.03.1988 equating his case with that of Shri Chhagan Lal Jain, which was clear-cut violation of the orders of the CAT because the last person senior to the applicant appointed out of 1980 select list was Shri Ganpat Ram Yadav on 08th June 1984 (Annex.A/2), and the appointment of Shri Chhagan Lal Jain was made out of the select list of 1988 and could not have been related to the applicant. Therefore, the applicant filed a contempt petition before this Tribunal which was dismissed on 28.09.2001 on the ground of limitation as well as on merits of the case. The applicant finding the decision of the Tribunal to be legally untenable filed SLP in the Supreme Court but withdrew the same on 04.03.2002 as he was legally advised to go to the Hon'ble High Court for proper execution of the CAT orders and from where, based on the decision of the Hon'ble High Court in SB Civil Writ Petition No. 1945/2004 on 15.04.2008, the applicant has filed this OA before this Tribunal.

17. The main ground taken by the applicant during the arguments was that the order of the CAT dated 09th February, 1993 categorically stated that he should be appointed to the IAS w.e.f. 05th March, 1984 or the date from which any senior to him was appointed to IAS, whichever is later. The only senior person appointed to the IAS out of the select list of 1980 was Shri Ganpat Ram Yadav who was appointed to the IAS on 08th June, 1984 and he should also be appointed from that date. It has been a travesty of the justice that he has been appointed to the IAS w.e.f. 21.03.1988 and though he did not figure in the select list of 1988 but as per the reply of the State Government his name was deemed to have been inserted in between Shri Chhagan Lal Jain and Shri Ratan Singh Singhi and he was given appointment w.e.f. 21.03.1988 i.e. from the date Shri Chhagan Lal Jain got appointment, but this deemed insertion has no basis in rules. He further emphasized that the order of the CAT is clear and uses the word 'any' i.e. any senior officer and does not give any reference to the immediate senior officer; while 'any' is an indefinite adjective, 'immediate' is definite adjective and as the order of CAT uses the word 'any' he has a right to be appointed from the date of appointment of Shri Ganpat Ram Yadav and be given the allotment of the year 1974 instead of the year 1979 as also subsequent promotions to the selection grade and Super Time Scale and the consequential benefits of pay and pensions.

18. On the ground of limitation, it was argued by the applicant that he has been pursuing his case from pillar to post for proper

execution of the judgment of the Tribunal and not only made representations to the State Government and Government of India but also approached the Hon'ble CAT, High Court and Supreme Court and only on the basis of decision of the High Court dated 15.04.2008, he has come again to the Tribunal for implementation of the earlier order of the Tribunal dated 09th February, 1993 which was absolutely fair and just, but despite that justice and the dues have been denied to him. The applicant further argued that actually there is no delay but he has filed the MA No.40/2009 for condonation of delay as a measure of an abundant caution. He argued that because he was not appointed to the IAS in accordance with the order of the CAT dated 09th February, 1993 and that he should have been appointed from the date his senior Shri Ganpat Ram Yadav was appointed to the IAS i.e. 08th June, 1984 because he was the last person from the select list of 1980, who was senior to him and was appointed to the IAS, and therefore there was continuing loss to him. He has not only been deprived of his due selection from the said date but on the basis of his unjustified appointment w.e.f. 21.03.1988 linking him with the case of Shri Chhagan Lal Jain, who anyway was appointed out of select list of 1988 and not from the select list of 1980, he has been deprived of his proper year of allotment and consequential loss to the promotion to the selection grade and super time scale, and pay and pensionary benefits. Thus, there has been continuous loss and continuing cause of action because of non-execution of the order of

the CAT dated 09th February, 1993 and in support of his argument, he cited the following cases:-

- (i) *Shakuntala Devi Jain v. Kuntal Kumari & Ors.; AIR 1969 SC 575*
- (ii) *State of West Bengal v. The Adm., Hawrah Municipality & Ors.; AIR 1972 SC 749*
- (iii) *N. Balakrishnan v. M. Krishna Murthy: 1999 (1) Apex. Court Journal 52 (SC)*
- (iv) *Rammath Sao v. Gorbandh Sao, AIR 2002 SC 1201*
- (v) *Collector Land Acquisition, Anankhag, AIR 1987 SC 1353.*
- (vi) *State of Haryana v. Chandra Mani & Ors.; AIR 1996 SC 1623*

19. He further contended that after the order dated 07.06.1993 appointing him to the IAS w.e.f. 21.03.1988 he approached the Hon'ble Supreme Court by filing an SLP No.9522/1993 but the same was rendered infructuous as per the order of the Hon'ble Supreme Court dated 11.10.1996. He initiated contempt proceedings before the Tribunal in April 1997, registered as CP No.08/1998 which was decided on 28.09.2001. The copy of the judgment of the Tribunal in CP No.08/1998 (in TA No. 05/1992) decided on 28.09.2001 was submitted by the applicant during the hearing. He filed SLP No.1945/2004 against the decision of the Tribunal but withdrew the same as he was advised to go to the High Court in S.B. Civil Writ Petition and in view of the decision of the Hon'ble High Court dated 15.04.2008 he has approached the CAT by filing this OA and a few months delay occurred on account of his illness and other problems. Thus, he has been bonafidely pursuing his case in Courts, and therefore he prays that the delay, if any, be condoned.

20. On behalf of Government of India (respondent No.1), Smt. K. Parveen, contended that the Additional Affidavit filed by the Under Secretary Shri S.S. Shukla may be treated as reply on behalf of respondent No.1 and she reiterated the points made in the affidavit that Shri Chhagan Lal Jain, who was senior to the applicant and higher in rank in the select list of 1980 was given appointment to the IAS w.e.f. 21.03.1988 and therefore, the applicant being junior to Shri Chhagan Lal Jain could not have been given appointment earlier. Counsel for the respondent No.1 further contended that the direction of the Tribunal in TA No.05/1992 decided on 09th February, 1993 had been implemented properly and as Shri Chhagan Lal Jain was the person senior to the applicant and who was in the select list of 1980 and was promoted to the IAS in the year 1988, thus the promotion of the applicant is in accordance with the rules and regulations and procedure laid down.

21. Shri Kamal Dave, counsel on behalf of State Government (respondent No.2), contended that in this OA the applicant has sought the execution of the order of the CAT dated 09th February, 1993 and consequential relief but this OA has been admittedly filed in 2009 which is well beyond the limitation period. The applicant has woken-up in the year 2009 and sought relief for implementation and execution of the order dated 09th February, 1993. In this regard, the Administrative Tribunals Act specifically provides for execution of order and as per Section 27 read with Section 20 and 21, the limitation for filing an application for execution of the order is one year from the date of order and in case any representation is

made and a period of 6 months has expired thereafter without such final order having been made within one year from the date of the expiry of the said period of 6 months. Thus, at the best the application for execution of the order could have been filed as per Section 21 of the Act, but in this case it has been taken up after more than 12 years. It was further contended that in fact the relief sought by the applicant will almost result in re-writing of the judgment and will definitely change the status of the other persons who have not been impleaded as party in this case.

22. Counsel for the respondent No.2 further contended that the MA for condonation of delay does not give any cogent reasons and the order of the High Court dated 15.04.2008 cannot come to the rescue of the applicant for overcoming the limitations because the High Court has not condoned the delay. Even on merits, it was contended by the counsel for the respondent No.2 that in para 19 i.e. operative part of the order of the CAT dated 09th February, 1993 directions were given to the Central Government and the notifications have been issued accordingly. Further, in the reply the State Government has given all the reasons for appointment of the applicant to the IAS w.e.f. 21.03.1988 because this was in accordance with the IAS (Recruitment) Rules, 1954 and the IAS (Appointment by Promotion) Regulations 1955. As Mr. Chhagan Lal Jain was senior to the applicant and he also found place in the 1988 select list (actually Review Select List of 1985 prepared on 29/30th January, 1988 Ann.A/6), therefore, the applicant was given appointment with effect from the same date as Mr. Chhagan Lal

Jain and though the applicant was not included in the 1988 select list but his name was deemed to be inserted between Mr. Chhagan Lal Jain (Serial No.6) and Ratan Singh Singhi (Serial No.7) and he has been given due appointment. Therefore, no injustice has been done to the applicant and the fine distinction being made by the applicant between 'any' and 'immediate' has not much consequence because it is clear in the CAT judgment that he has to be given appointment from the date any senior is given and in this case Mr. Chhagan Lal Jain was senior to him and accordingly he was appointed with effect from the same date i.e. 21st March, 1998. It has been further contended that at this stage, a decided case cannot be re-opened and as the implementation of the judgment of the CAT dated 09th February, 1993 has already been done according to the rules, and therefore the matter cannot be reopened or re-adjudicated in this another OA after so many years. Counsel for the respondent No.2 contended that there is no continuing cause of action and the applicant has mixed up his case and even some of the orders were passed way back in the year 2000 and upto 2006 and they were never challenged and the same cannot be challenged after 9 years, and the OA fails both on limitation and merits.

23. In reply to the arguments made by the counsel for the respondent No.2, the applicant contended and reiterated that he was duly selected in the 1980 select list and his name was forwarded in January, 1985 for appointment to the IAS to the Central Government. The fact that Shri Ganesh Prasad Nagar, who was senior to him but was served a charge sheet and compulsory retired

and the fact that Shri Chhagan Lal Jain did not represent his case, cannot be held against him. In fact in the reply of the State Government it has been mentioned that his name was deemed to be inserted in the list of 1988 between serial No.6 & 7 though there is no such provision in the IAS (Appointment by Promotion) Regulations, 1955. He also referred to the various orders issued after appointing him to the IAS w.e.f. 21.03.1988 specially at Annexures-A/9, A/10 and A/11, in which his pay has been further equated with Shri Ratan Singh Singhi, who was junior to him. It has not even been explained why his name was not included in the select list of 1988 and his ACRs were down graded to 'good' although rule 7 (3) provides that reasons should be given. Thus, he has been deprived of his due appointment and consequential benefits by improper or by non execution of the order of the CAT dated 09th February, 1993 and had the order been executed correctly he would have got appointment to the IAS w.e.f. 08th June, 1984 i.e. from the date of appointment of Shri Ganpat Ram Yadav and also got the allotment year of 1974 with all consequential benefits, of promotions, pay and higher pension and of which he has been deprived. He further argued that in fact he has been victimized and he has had to fight his case for a long period even after his retirement in the year 1993, and his claim is fully justified.

24. We have given our careful consideration to the rival contentions of the parties and also perused the record.

25. It is noted that that the applicant had filed a Writ Petition in the High Court in 1986 for his appointment to the IAS which was transferred to CAT and registered as TA No. 05/1992, decided by the Tribunal on 9th February, 1993. After the order of the CAT dated 09th February, 1993 in TA No.05/1992, the Government of India issued the order dated 07.06.1993 (Annexure-A/3) appointing the applicant to the IAS w.e.f. 21.03.1988. Thereafter, the State Government filed an SLP No.9522/1993 in the Apex Court which was disposed of on 11th October, 1996 as the matter having been infructuous in view of the applicants retirement on 30th June, 1993 but the question of law decided by the Tribunal was left open to be decided in a proper case. Thereafter, aggrieved with the aforesaid order of appointment and not getting proper response to his representations and improper execution of the order, the applicant filed a Contempt Petition bearing CP No. 08/1998 and the same was decided by this Tribunal on 28.09.2001. Thereafter, he filed a SLP, withdrew the same and filed a Writ Petition in the High Court and as brought out by the applicant then on the basis of the order of the Hon'ble High Court dated 15.04.2008, he approached this Tribunal in the year 2009. The applicant has also given reference to the certain representations filed by him before the State Government and is having met the Minister of DoP with regard to his case. Thus, it appears that the applicant during this entire period & even after retirement has been bonafidely pursuing his case on judicial and administrative side and as it always advances the cause of justice that the matter should be decided on merits

rather than on technicalities, therefore, the Misc. Application No.40/2009 for condonation of delay is allowed and the delay in filing the OA is condoned, as there are reasonable grounds to condone the delay in filing the OA.

26. It is seen that the applicant by way of this OA has challenged the legality of the order appointing him on the post of IAS w.e.f. 21.03.1988 instead of 05.03.1984 or from 08.06.1984 the date on which Mr G.R. Yadav was appointed as IAS from the Select List of 1980, and further prayed to execute the judgment of this Tribunal passed in T.A. No. 05/90 dated 09.02.1993. It is settled position of law that once an issue is finally decided by the competent court, it cannot be re-agitated or reopened by filing fresh OA. In this particular case TA No. 05/92 was decided on 09.02.1993 and for the execution of the same order a contempt petition bearing No.08/1998 was filed before this Tribunal and Division Bench of this Tribunal in its order dated 28.09.2001 while interpreting the judgment and directions given in this TA dismissed the same, observing as follows: -

"What we have to see is, whether there is any disobedience of the order of this Tribunal. As per the order of this Tribunal dated 09.02.1993, it is clear that the applicant was directed to be promoted w.e.f. 05.03.1984 or the date from which any officer senior to him in the select list of 1980 was appointed to IAS, whichever is later. Since his immediate senior Shri Chhagan Lal Jain, who was also there in the 1980 select list, was promoted in the year 1988, the applicant was required to be promoted only from the date, and not from any date earlier to that. This Tribunal never intended to promote the applicant over and above his senior in the 1980 select list. Shri Chhagan Lal Jain was above him in the 1980 list, and since he was promoted only w.e.f. 21.03.1988, the applicant has also been given promotion with effect from that date only vide Annexure-A/2 dated 07.06.1993. Accordingly, we find that the order of this Tribunal has been obeyed and has been fully complied with, and absolutely, we do not find any merit in this Contempt Petition."

Against the aforesaid order, the applicant approached the Hon'ble Apex Court and later, as admitted, withdrew his SLP.

Thus, judgment passed by the D.B. of this Tribunal has attained finality in C.P. No.08/1998 and the issue regarding execution of the judgment passed by the D.B. of this Tribunal in TA No. 05/92 after attaining finality cannot be reopened by filing a fresh OA. The Hon'ble Rajasthan High Court dismissed the writ petition No.1945/2004 on 15.04.2008 of the applicant on the ground of jurisdiction only and stated that the applicant may avail alternative remedy available to him. In our considered view, the only way to get the execution of the orders of this Tribunal was to file C.P. but once Division Bench of this Tribunal interpreted the order dated 09.02.1993 and dismissed the C.P. No.08/1998 on 28.09.2001, the matter has attained the finality after withdrawal of the SLP by the applicant himself. We, therefore, see no reason to interfere again in the same issue by interpreting the order of the Division Bench passed in TA No.05/1992 dated 09.02.1993 as it would amount to fresh decision on the same issue.

27. In view of the discussions made hereinabove, we see no merit in the OA. Accordingly, the OA is dismissed with no order as to costs.


(Meenakshi Hooja)
Administrative Member


(Justice K.C. Joshi)
Judicial Member

R/C
D.S. Singham
28.2.14



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