

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 138/1990  
KXXXXXX6X

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DATE OF DECISION 20.6.1991

D.Ravi \_\_\_\_\_ Applicant (s)

M/s.M.Lalitha Nair & S.M.Prem \_\_\_\_\_ Advocate for the Applicant (s)

Versus

Govt. of India, Ministry of Personnel, Public Grievances  
and Pension(Department of Personnel and Training),  
New Delhi, represented by its Secretary and another

N.N.Sugunapalan,SCGSC \_\_\_\_\_ Advocate for the Respondent (s)  
Mr.P.V.Mohanan-For State Govt. of Kerala.

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 11.2.1990 the applicant who belongs to the Kerala Cadre of the Indian Administrative Service and was appointed to the I.A.S. by selection from a non State Civil Service cadre has prayed that the impugned order dated 24.5.1989 at Annexure-A5 assigning to him the year of allotment of 1980 in the I.A.S. as also the order dated 18.12.89 at Annexure-A7 rejecting his representation against that year of allotment be both set aside as illegal and unconstitutional and that he should be assigned the year of allotment of 1971. He has also prayed that para 2 of Government of India's letter dated 6.6.1978 quoted by him in para 4.9 of his application

should also be declared to be illegal as it is contrary to the Seniority Rules. By this letter it was laid down that " a non-State Civil Service Officer who was considered unsuitable by the Selection Committee for appointment to the I.A.S. on an earlier occasion should not get a year of allotment higher than the year of allotment assigned to the non-State Civil Service Officer who was also considered along with the former in earlier year but was found suitable by the Selection Committee and was therefore appointed to I.A.S earlier than him ...." He was intially appointed as Director of Survey and Land Records and his regular appointment to the I.A.S. was notified on 7.11.1988. His grievance is that though in accordance with the various posts equivalent to the Senior Scale of the I.A.S. held by him he was entitled to get a year of allotment of 1978, by mischief of the impugned provision in the Government of India's letter of 6.6.1978, as quoted above, his year of allotment was fixed as 1980 because in a selection held prior to 1987, he along with another non-SCS Officer Shri T.R. Gopalakrishnan was considered for promotion to the I.A.S., but only Shri Gopalakrishnan was selected and was given 1980 as year of allotment. The applicant's plea is not to speak of 1978 he is actually entitled to the year of allotment of 1971 because from 1976 onwards when he became Commissioner of Corporation of Cochin he has been holding posts equivalent to the Senior Scale of the I.A.S. However, on the basis of erroneous statement made by the State Govt. that only the post of Joint Director of Municipal Administration is equivalent to the Senior Scale

they  
of I.A.S. /recommended that he should be given 1978 as the year of allot-  
ment on the fact that he was given notional promotion as Joint Director  
of Municipal Administration on 1.7.83. He has argued that he was promoted  
to the I.A.S under Rule 8(2) of the I.A.S. Recruitment Rules under which  
"any person of outstanding ability and merit serving in connection with  
the affairs of the State who is not a member of the State Civil Service"  
can be considered for such promotion. In accordance with Rule 3 of the  
I.A.S.(Appointment by Selection) Regulations, 1956 an officer of outstand-  
ing merit and ability who has completed not less than 8 years' of continu-  
ous service under the State Govt. in a gazetted post is eligible. He  
has argued that seniority of such an officer is determined under Rule  
3 of the I.A.S.(Regulation of Seniority) Rules on an adhoc basis on the  
recommendation of the State Govt. and in consultation with the  
Commission with the proviso that he cannot be given a year of allotment  
of a State Civil Service Officer already promoted to the I.A.S. and whose  
length of service in the State Civil Service is more than the length of  
continuous service of the non-SCS Officer in connection with the affairs  
of the State. The applicant's contention is that subject to this embargo  
there can be no other embargo for determining the year of allotment  
a  
of /non-SCS Officer promoted to the I.A.S. The executive instructions  
of the Government of India issued on 6.6.78 depressing the year of allot-  
ment of a later non-SCS appointee to the I.A.S. to the year of allotment

of another promotee of the same category who had been selected by considering the later promotee as unsuitable, is unconstitutional.

2. The applicant's further contention is that the applicant was promoted as Corporation Commissioner, Cochin on 9.6.1976 which is equivalent to the post of Deputy Secretary to the State Govt. which post has been considered by this Tribunal in other cases as equivalent to the Senior Scale of the I.A.S. According to him the State Govt. itself declared the post of Commissioner of Corporation as equivalent in status and responsibility to the post of Deputy Secretary to Govt. by Annexure-A1. He has mentioned that one I.A.S. officer Shri Vardachari who was earlier Deputy Secretary to the State Govt. was appointed later as Commissioner of Calicut Corporation which post was created as temporary addition to the I.A.S Cadre to accommodate him. Under Rule 3 of the Kerala Municipal Corporations (Appointment of Commissioners) Rules, 1963 an I.A.S. officer can also be appointed to that post. The applicant has named six I.A.S. Officers in the Senior Scale who had been appointed as Commissioners of Municipal Corporations in Kerala. Accordingly the applicant's service as Corporation Commissioner of Cochin from 1976 should be reckoned for determining his year of allotment. In 1976 the post of Joint Director of Municipal Corporation was not in existence and the Commissioner of Corporation was next in rank and status to the post of Director of Municipal Administration. The applicant was given notional promotion as Joint

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Director, Municipal Corporation on 1.7.1983. This post is equivalent to that of Joint Secretary to the State Govt. By taking his service from 1983 only as equivalent to the Senior Scale of the I.A.S., he has been wrongly denied the benefit of his service from 1976 which was also equivalent to <sup>that in</sup> the Senior Scale of the I.A.S for the purposes of seniority.

The Government of India, however, while recognising his service at least from 1983 as equivalent to the Senior Scale of the I.A.S. did not give him the year of allotment of 1978 based on that service, but downgraded it to 1980 in their impugned letter at Annexure-A5, the relevant part of which reads as follows:-

"2. It is felt that the post of Joint Director of Municipal Administration held by the officer w.e.f. 1.7.83 in the then scale of pay of Rs.2100-3040 can be considered as equivalent to the senior scale post of I.A.S. from the point of view of the duties and responsibilities attached to the post and also the scale of pay, for the purpose of application of the analogy of rule 3(3)(ii) of the Seniority Rules. Thus, taking into account 1.7.83 as the crucial date for determination of his year of allotment, Shri Ravi is entitled to 1978 as the year of allotment in I.A.S. However, it is noticed that the name of Shri D. Ravi was considered by Selection Committee in 1986 also but he was not selected and one Shri T.R.Gopalakrishnan was selected. Since Shri Gopalakrishnan has been assigned 1980 as the year of allotment, therefore, in terms of para 2 of this department's letter dated 6.6.1978, Shri Ravi cannot be assigned a year of allotment earlier than 1980. As per the information furnished by the State Government, the proposed year of allotment is not to be restricted further under proviso to rule 3(3)(iii) of the Seniority Rules."

His representation was rejected by the impugned order at Annexure-A7.

The applicant has conceded that while the pay scale of Corporation Commissioner is Rs.850-1450 the pay scale of Deputy Secretary is Rs.950-1450 but has argued that considering the duties and responsibilities attached to the former post a difference of Rs.100/- in the minimum of the two pay scales should not stand in the way of equation of these two posts.

His argument is that year of allotment in accordance with the Seniority Rules is to be fixed on an adhoc basis depending upon the circumstances of each case and his year of allotment could not be depressed to the year of allotment of Shri Gopalakrishnan by the mischief of the executive instructions. He has also quoted the case of one Shri K.P.Joseph another non-SCS Officer who was selected along with the applicant in 1987 but was assigned the earlier year of allotment of 1976 when Shri Joseph commenced working as Deputy Secretary in the scale of Rs.1950-2950 with effect from 18.5.81 whereas the applicant started working as Corporation Commissioner in the same scale of Rs.1950-2950 with effect from 9.6.76. Shri Joseph had seventeen years of Gazetted service whereas the applicant had twenty two years of Gazetted service. He has also pointed out that whereas Shri Joseph became a Class I Officer in 1979, the applicant became a Class I Officer in 1971. While Shri Joseph started exercising the powers of Head of Department in 1984 the applicant started doing so from 1976.

3. In the counter affidavit filed by respondent 1, i.e., the Government of India, it has been stated that on the basis of the various posts held by the applicant prior to his appointment to the I.A.S., the applicant was entitled to 1978 as the year of allotment, but a decision had been taken in consultation with the Union Public Service Commission that between two officers considered by the Selection Committee in a particular year, one who is selected should not become junior to other officer who is not selected in that particular year, but is appointed to the IAS

on the basis of subsequent selection. They have stated that " since the applicant was also considered earlier by the Selection Committee, who judged his suitability for appointment to IAS by Selection Committee and in that selection the applicant was not found suitable and one T.R.Gopalakrishnan was found suitable, therefore considering the higher merit of Shri Gopalakrishnan and as per the principle of natural justice, that Shri Gopalakrishnan should remain senior to the applicant in the IAS as per the decision 6.6.1978, the year of allotment of the applicant was restricted to 1980, being the year allotment of Sri Gopalakrishnan." They have argued that the restriction in the year of allotment imposed in the Government of India's letter dated 6.6.1978 is based on the sound principle of natural justice and it does not override the provision of the statutory Seniority Rules which lays down that the year of allotment of non-SCS Officer is to be determined on an adhoc basis. In the cases decided by the Tribunal, years of allotment of non-SCS Officer did not fall within the mischief of this restrictive policy. Since Shri Gopalakrishnan was selected in 1986 "when the applicant was rejected", it is only logical that Shri Gopalakrishnan remained senior to the applicant. As regards Shri Joseph they have stated that since the applicant and Shri Joseph were both selected together, there is no question of comparison of <sup>their</sup> service particulars.

4. In the counter affidavit filed by the State Government the same argument as given by the Government of India has been reiterated

to say that the applicant who conceded the appointment to the IAS to Shri Gopalakrishnan in 1986 when the applicant was not considered suitable, cannot on promotion in a subsequent year get earlier year of allotment. They have clarified that the posts of Municipal Commissioners Grade III were included in the gazetted grade with effect from 1.7.1978 before which it was a non-gazetted post. They have also denied that the post is equivalent to that of Deputy Secretary and that the declaration of equivalence given in the order of 31.3.1961 did not contain general declaration that the post of Commissioner of Corporation is equivalent in status and responsibility to the post of Deputy Secretary to Govt. and specifically relate to the post of Commissioner of Thiruvananthapuram Corporation. They have further clarified that the post of Corporation Commissioner intrinsically is not equivalent to the Senior Scale of the I.A.S. but to enable I.A.S. Officers to draw pay under Rule 9 of the I.A.S.(Pay) Rules while holding the post such an equation is notified. They have given the pay scales of Deputy Secretary and Commissioner, Municipal Corporation from time to time which indicate that prior to 1.7.83 the pay scale of the latter post was lower than the pay scale of Deputy Secretary. After 1.7.83, however, they carried the same pay scale. The post of Joint Director of Municipalities, however, carried the same pay scale as that of Commissioner of Corporation till 1.7.83 and higher pay scale after 1.7.83. The applicant was Secretary to Greater Cochin Development Authority from 4.7.80 in the scale of Rs.1125-1725 which was the same

as that of Commissioner of Corporation but lower than that of Deputy Secretary in the scale of Rs.1200-1800. From 1.7.83 he became Regional Joint Director of Municipal Administration in the scale of Rs.2100-3040 which was then higher than the pay scale of Deputy Secretary being Rs.1950-2950. They have stated that the post of Corporation Commissioner cannot be equated to the Senior Scale of the I.A.S as its jurisdiction is confined to the limits of the Corporation. They have conceded that the post of Deputy Secretary to Govt. has been treated as a post equivalent to the Senior Scale post in the I.A.S. and there is no difference of duties of Deputy Secretaries whether held by an I.A.S Officer or others, even though their pay scales may differ. Since Shri Joseph had not earlier been considered for promotion to the I.A.S and rejected, his year of allotment is not liable to be depressed by the year of allotment of Shri Gopalakrishnan.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for respondent 2 produced for our perusal the proceedings of the Selection Committee which met on 30.12.1986. We found from the proceedings that the Selection Committee considered amongst non-SCS Officers five candidates including the applicant and Shri T.R.Gopalakrishnan. They examined their records and also interviewed them and found that only Shri Gopalakrishnan was suitable for appointment to the I.A.S. Accordingly

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it can be deduced that they did not find the applicant as suitable for promotion to the I.A.S. We see nothing wrong in the instructions issued by the Govt. of India in their letter dated 6.6.78 which state that between two non-SCS Officers if one is found suitable for promotion so and the other not in a particular year and the officer who was found <sup>6</sup> not suitable in the earlier year does later make the grade and is appointed to the I.A.S., the latter cannot steal a march over the one who was earlier selected in preference to him. The statutory Rule 3(3)(iii) of the I.A.S.(Regulation of Seniority) Rules gives a 'carte blanche' to the Central Govt. to fix the year of allotment of a non-SCS Officer on an adhoc basis on the recommendation of the State Govt. concerned and in consultation with the Union Public Service Commission. The Central Govt. is justified to issue executive instructions to fill up the gap in the Statutory Rules in defining the restrictions within which the year of allotment should be fixed on an adhoc basis and identifying the pit fall to be avoided in rendering a subsequent promotee senior to an earlier promotee who had been found suitable in an earlier year while the later promotee was found unsuitable. It may be that the later promotee had longer period of gazetted service or had held higher posts when the earlier promotee was holding posts of lower rank and status. But once both of them appeared in the same selection the loser

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can never be senior to the winner by his subsequent selection. If the loser becomes senior to the winner by virtue of his subsequent promotion, it makes a mockery of the earlier selection. It is true that Shri Joseph has lesser gazetted service and held posts of lower ranks when the applicant was holding higher posts. But since he was not found unsuitable when Shri Gopalakrishnan was selected because he did not compete with him in 1986, his year of allotment cannot be suppressed by the year of allotment of Shri Gopalakrishnan. Having lost the race to Shri Gopalakrishnan in 1986, the applicant cannot now claim seniority above him in the I.A.S. by his subsequent selection by cutting corners. His year of allotment has to be restricted to 1980. Since by the application of the guidelines issued by the Govt. of India in its instructions dated 6.6.78, the applicant's year of allotment has to be restricted to 1980 even though on the basis of the posts held by him from 1983 his year of allotment could be computed as 1978, the question of computing his pre-1983 service <sup>including</sup> ~~as~~ service as Commissioner of Corporation as equivalent to the I.A.S. does not arise because even if that service is taken to be equivalent to the I.A.S., his year of allotment remains restricted to 1980. Accordingly we do not wish to go into the merits of equivalence of his pre-1983 service being equivalent to a post in the Senior Scale of the I.A.S. and refrain from giving any opinion about

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the same.

6. In the facts and circumstances we see no merit in the application and dismiss the same without any order as to costs.

  
(A.V. Haridasan)  
Judicial Member

  
S.P. Mukerji  
10.5.91  
Vice Chairman

n.j.j