

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 199/90
XXX No.

100

DATE OF DECISION 28.2.1992

Lida Jacob

Applicant (s)

M/s. T.P.Kelu Nambiar & Johnson Manayani Advocate for the Applicant (s)

Versus

Union of India, represented by Respondent (s)
Secretary, Department of Personnel and Training,
Ministry of Public Grievances and Pension,
Central Secretariat, New Delhi and 15 others.

Mr.A.A.Abul Hassan,ACGSC Advocate for the Respondent (s)
CORAM : Mr. K.M.Joseph Kuttiyil
M/s.K.J.Joseph & Joe Kalliatth

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?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

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

In this application dated 3.3.1990 the applicant who is a member of the Kerala Cadre of the Indian Administrative Service has challenged the impugned order dated 27.10.1988 ^(Annexure A5) communicating the rejection of her representation by the Government of India and has prayed that the amendment to the I.A.S.(Regulation of Seniority) Rules 1987 dated 18th January 1988 at Annexure-A3 are not applicable for fixing her year of allotment. It should be declared to be 1982 in the gradation list at Annexure-A6 and her rank changed from 139 to 125. She has challenged the amendment at Annexure-A3 also. The material facts of the case having a bearing on decision therein can be recounted chronologically as follows:-

2. The applicant having joined the State Civil Service in 1978 became eligible for promotion to the I.A.S after completing eight years of service on 1.1.87. The Selection Committee met on 16.12.87 for inclusion of her name also in the Select List for promotion to the I.A.S. While the Select List was being processed through the State Govt, Central Govt and

U.P.S.C the impugned amendment to the Indian Administrative Service (Regulation of Seniority) Rules, 1987 was notified on 18th January 1988. By this amendment the seniority of promoted officers of the State Civil Service is to be fixed on the basis of weightage to be given for the length of service rendered in the State Civil Service. Previously, the seniority, i.e., the year of allotment of the promoted officers was to be fixed in relation to the year of allotment of the juniormost direct recruit who started officiating in a senior-duty post of the I.A.S. immediately before the officiation in similar post of the promoted officer after inclusion in the Select List. The Select List in which the applicant was included was approved by the U.P.S.C on 5.2.88. The applicant started officiating in a Cadre post from March 1988 and her promotion to the I.A.S was notified on 31.5.88. The applicant represented on 8.9.88(Annexure A4) that her year of allotment in the I.A.S be fixed on the basis of the old Seniority Rules instead of the amended Seniority Rules on the ground that she became eligible for promotion in January 1987 when the old Rules were applicable and when the amended Rules were notified, on 18.1.88 the selection process had already been over. Her representation was rejected by the Government of India through the communication dated 27.10.88 at Annexure-A5 on the ground that since she was appointed to the I.A.S. after coming into force of the amended Rules, her year of allotment has to be fixed by the amended Rules. This application before the Tribunal was filed by the applicant on 6.3.90. also

3. The applicant has filed an application for condonation of delay of 125 days which was opposed by the learned counsel for the respondents and the application was admitted keeping the question of limitation open to contest.

4. Respondent No.1 and some of the party respondents out of 3 to 16 have opposed the original application both on merits

as also on the question of limitation. Before going into the merits it may be useful to go into the question of limitation.

5. As the chronological narration of events above will show, the cause of action in this case arose vide the communication dated 27.10.88 at Annexure-A5 by which the applicant's representation dated 8.9.88 was rejected. The period of limitation prescribed under Section 21 of the Administrative Tribunals Act is one year. Accordingly the Tribunal should have been moved on or before 27.10.1989. On the other hand this application was submitted to the Tribunal on 6th March 1990 with more than four months' delay. The applicant herself admits that there was a delay of 125 days. In the miscellaneous application dated 3rd March 1990 for condonation of delay, the reason indicated by the applicant is as follows:-

"3. Annexure A5 order was issued by the 2nd respondent on 27.10.1988. The time prescribed for preferring application against Annexure A5 under Section 20 of the Administrative Tribunals Act 1985 expired on 27.10.1989. I submit that my appointment to the cadre of IAS is on 31st May 1988. As per rule even though my probation period has to be declared within 1 year from the date of appointment, 2nd Respondent has not yet declared the probation period. Since my probation is to be declared on the basis of confidential records maintained by the 2nd respondent I am under the bonafide impression that if I approach this Honourable Tribunal for redressal of my grievance regarding seniority that may detrimentally affect my services. When I consulted my counsel at Ernakulam I understood that even though my probation is not declared I can move before this Hon'ble Tribunal for redressal of my grievance against respondents 1 and 2.

"4. Moreover Annexure A6 gradation list of the I.A.S. Officers Kerala Cadre as on 1.7.1989 was issued only recently by the 2nd Respondent. Then only I could understand that I am assigned rank No.139 instead of rank No.125. I have challenged Annexure A6 gradation list in the Original Application."

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We are not at all impressed by the ground taken by the applicant for condonation of delay. The applicant on the other hand ~~from~~ ⁱⁿ the application ~~betrays~~ ^{displays} a degree of timidity in seeking justice. She felt that if she approached the Tribunal, she being a probationer her career may be affected. But finally on the advice of her counsel she moved the application even though her probation was not still declared to have been completed satisfactorily. We feel that an officer who has not enough courage to seek justice in her own case can muster little or no courage to grant justice to others. This is hardly expected of a member of the All India Service. The ground, therefore, falls through. The fact that she had not been confirmed in the I.A.S even when she moved the Tribunal shows that the ground taken by her has no legs to stand on. Even otherwise we do not find any *prima facie* case of miscarriage of justice in her case to warrant waiving of delay in the interest of justice. The application is obviously time-barred. Even otherwise having heard the arguments of the learned counsel and gone through the documents, we do not find much merit in the application. Since the applicant became a member of the IAS only on 31.5.88 she has to be governed by the Seniority Rules which were amended on 18.1.88. The unamended rules which were in force till 17.1.88 cannot be applied to her as she was not a member of the I.A.S when these rules were in force. Accordingly by no stretch of law or legal fiction can she claim the benefit of the old seniority rules when she was not a member of the I.A.S but merely eligible for being considered for promotion to the I.A.S.

6. As regards delay in her promotion to the I.A.S. we do not find any substance in her grievance. The Selection Committee for 1986 had met on 30.12.86. The Selection Committee for 1987 after she had become eligible, met on 16.12.87. Since the life of a Select List is one year, had the Selection Committee of 1987 met in early 1987 that would have cut short the life of the Select List of 1986 at the cost of the chances of promotion of officers who were

included in that list. From the narration of the various stages of finalisation of the Select List, we are satisfied that there has not been any undue delay in its approval by the U.P.S.C. and the notification of the promotions thereafter. Even if the Selection Committee had met earlier and the Select List finalised five or six months earlier before the amendment was issued on 18.1.88, it is doubtful whether the applicant would have still been promoted to the I.A.S. before 18.1.88 because the 1987 Select list prepared in December, 1987 was for filling up the vacancies of 1988. In any case as stated earlier the meeting of the Selection Committee of Kerala could not be advanced against the all/India programme fixed in consultation with the U.P.S.C., and advancing the date of meeting of the Selection Committee would have cut short the life of the previous Select List prepared on 30.12.1986.

7. As regards the merits of the amended Seniority Rules we do not find any element of discrimination or arbitrariness. On the other hand as has been pointed out by the State Govt. the amended Seniority Rules by giving specified weightage to particular number of years of service put in under the State Civil Service standardised an all India yardstick for fixing of seniority. Otherwise, under the old Recruitment Rules the seniority being determined on the dates of officiation of the direct recruits and State Civil Service officers in the Select List against senior duty posts, there was wide variation of seniority of promoted officers with the same length of service between one State and another. For instance if in one State a State Civil Service officer with fifteen years of service got opportunity to be included in the Select List and thereafter officiated in a Senior Scale post whereas in another State such an officiation takes place after completion of even nine years of service, the State Civil Service officer in the first State with fifteen years of service would

get near about the same seniority in the I.A.S. as the other officer with only nine years of service. This is because in both the States the juniormost direct recruits officiating in the Senior Scale would be having only four years of service.

8. 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 28.2.92

S.P. Mukerji 28.2.92

(A.V. HARIDASAN)
Judicial Member

(S.P. MUKERJI)
Vice Chairman

n.j.j.