

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~No.

300/90

199

DATE OF DECISION 28.02.1992

K.B.Valsalakumari Applicant (s)

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

Versus .

Union of India, represented Respondent (s)
by the 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.J.Joseph
Mr.K.M.Joseph

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

JUDGEMENT

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

In this application dated 6.3.1990 the applicant who is a member of the Kerala Cadre of the Indian Administrative Service has challenged the impugned order dated 7th April 1989 (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 137 to 123. 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 1.1.1987. 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 7.3.88 (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 7th April 1989 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 9.3.90.

3. The applicant has argued that had her appointment not been delayed she would have been appointed before the Rules were amended on 18.1.88 and she would have got 1982 as the year of allotment instead of 1984 as per the impugned Seniority List at Annexure A6. The Selection Committee met at the fag end of the year, as a result of which her appointment was delayed and after two batches of direct recruits got promotion to the Senior Scale. Her representation dated 7.3.89 was rejected by the impugned communication dated

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7.4.89 at Annexure-A5. The Gradation List was published as on 1.7.89 and in that on the basis of her depressed seniority she was given 1984 as the year of allotment. The delay in her appointment was due to no fault of her's and if the Selection Committee had met within a reasonable time after 1.1.1987 when she became eligible and there were enough vacancies to accommodate her, she would have got 1982 as the year of allotment on the basis of the unamended Seniority Rules. She was appointed as a Select List Officer to a Cadre post in March 1988 when the 1984 batch of direct recruits were in the Junior Scale but her seniority under the amended Recruitment Rules has been fixed below them. She has argued that the basis for deciding year of allotment should be the date on which the State Civil Service Officer becomes eligible to be included in the Select List and not the date when her appointment to the I.A.S is notified. In case of a direct recruit the seniority is fixed automatically while in case of the promoted officer the administrative procedure for promotion takes about 18 months. This places the promoted officer to great disadvantage. Accordingly she urges that her seniority should have been fixed on the basis of the Rules prevailing at the time of her selection.

4. In the counter affidavit the first respondent, i.e, the Govt. of India have stated that in accordance with the Rules and Regulations the Selection Committee meets ordinarily every year and prepares a list of suitable SCS officers for promotion to the I.A.S. The list so prepared becomes the Select List only after the U.P.S.C approves it under Regulation 7(3) of the Promotion Regulations. The Select List officers are appointed to the I.A.S. after the list is communicated by the Central Govt. to the State Govt. and the State Govt. thereafter sends proposals for such appointment. Such a promoted officer appointed to the I.A.S. is governed by the various I.A.S Rules regarding pay, seniority etc. as prevailing on the date of his appointment and not by the Rules prevailing on the date he became eligible for appointment or when the meeting of the Selection Committee is held or on the date the list is approved by the U.P.S.C. If there has been any change in the Service Rules during this period

of processing, the officer cannot be governed by the Rules which stand amended on the date he is appointed to the Service. In the present case the applicant became eligible for promotion in January, 1987. As was the practice prior to 1989 the meetings of the Selection Committees for all the Cadres in the country used to be held in the months of November and December every year. The meeting of Kerala Cadre in 1987 was held on 18.12.87. The list was approved by the U.P.S.C on 5.2.1988 and communicated by the Central Govt. to the Government of Kerala on 16.2.1988. The Govt. of Kerala sent proposals for appointment of four Select List officers including the applicant on 29.4.1988 which was received by the Central Govt. on 3.5.88. The Central Govt. issued notification of promotion on 31.5.88. Thus there was no undue delay in issuing the notification. A new set of Seniority Rules was promulgated on 6.11.87 and these were further amended on 18.1.88 introducing the weightage formula. In accordance with the amended Rules the year of allotment is calculated by giving weightage to the length of State Civil Service rendered by an officer prior to his promotion to the I.A.S. A weightage of four years is given for the first 12 years of State Civil Service and one year for every 3 years of service thereafter is given. Since the applicant was appointed to the I.A.S. by promotion on 31.5.88 she was governed by the Seniority Rules of 1987 as amended on 18.1.88. Even though she had rendered nine years of service in the State Civil Service she was given a weightage of 4 years admissible upto 12 years of service and she was assigned 1984 as the year of allotment. Since an officer is governed by the rules in force at the time of his/her appointment to the Service and there was no undue delay of the applicant's promotion the question of applying the old rules which had ceased to be operative from 18.1.88 does not arise. Since the Select List itself was approved by the U.P.S.C in February, 1988 ^{ante-dating} ~~the question of~~ her promotion to the I.A.S. before 18.1.88 also is not possible. There was no discrimination in her promotion to the Service nor was there any discrimination

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between the promotees and direct recruits.

5. The party respondent No.7 who is a direct recruit in his counter affidavit stated that he was promoted to the Senior Scale in August 1987 and thus the applicant can have no claim of seniority over him. The rules prevalent at the time of preparation of the Select List cannot be applied to those who are appointed to the Service after the rules are amended. The applicant cannot claim seniority on the basis of the date when she became eligible for promotion. On other points he has given the same arguments as by the first respondent.

6. Respondent Nos.13, 14 and 15 have ^{given} amplified ^{narration of} the procedure of preparation of the Select List and have stated that under Regulation 6 the State Govt. forwards the Select List prepared by the Selection Committee to the U.P.S.C along with relevant records and observations of the State Government and the list becomes Select List only after it is approved by the U.P.S.C. It is only on the strength of the notification of the order of appointment that a member of the State Civil Service ceases to be a member of that Service and becomes a member of the I.A.S, whose seniority and other conditions of service are thereafter governed by the various provisions of the All India Services Act, Regulations and Rules. There was no delay in the meeting of the Selection Committee in 1987 nor in the promotion of the applicant to the I.A.S. There is no legal basis for claiming the benefit of the unamended Rules on the basis of the date on which the applicant became eligible for promotion. There is no provision of law which restricts the right of ^{the} Selection Committee to prepare the Select List within a particular period of time. The Central Govt. has the power to make Rules and Regulations and to effect necessary amendments thereon. The principle of weightage for State Civil Service has also been justified as reasonable and non-discriminatory between the direct recruits and promotees.

7. The second respondent, i.e, the Government of Kerala, in the counter affidavit has stated that the seniority of the applicant has been fixed strictly in accordance with the rules in force at the

time of her appointment to I.A.S in May 1988 and there is no basis in her claim that the rules which were in existence at the time she became eligible for promotion should be applied for fixing her seniority. Even if the Seniority Rules had not been amended, her year of allotment would have been 1983 and not 1982 as claimed by her. They have indicated that there was no delay in the meeting of the Selection Committee which was held on 16.12.87. The programme of the Selection Committee is drawn up by the Union Public Service Commission as it is to be chaired by the Chairman or a Member of the Commission. The Selection Committee for Kerala ^{meets} ~~is held~~ normally in December during the last five years. In 1986 it was held on 30.12.86. In 1988 it was held on 7.12.1988 and in 1989 it was held as late as on 7.3.1990. The applicant was given promotion to an I.A.S Cadre post on 14.3.1988 and proposals for promotion to the I.A.S were sent by the State Government on 29.4.1988 and the Govt. of India notified the appointment on 31.5.1988. The Select List of 1987 is drawn up for filling up the vacancies of the vacancies of 1988 and accordingly ⁹ any delay in 1987 for holding of the meeting of the D.P.C. is of no consequence. Since the direct recruits are eligible for promotion to senior time scale on completion of four years of service calculated from the year of allotment, there can be no discrimination in their favour. The officers of the Kerala Service are more fortunate than ^{those} in other States as the former get the opportunity of entering into the I.A.S in the 9th or 10th year of their service. They have ~~supported~~ ^{proposed} the amended Rules of giving weightage of State Civil Service for determining seniority by stating that under the old Seniority Rules, the year of allotment was determined by the dates of promotion to the Senior Scale of the direct recruits vis-a-vis dates of commencement of officiation in Senior Scale posts by the Select List/State Civil Service Officers. Even the difference of a few days in the comparative dates used to make considerable difference in seniority. The new Weightage Rule is thus more rational as it ^{does} ~~is~~ not

depend upon the fortuitous circumstance of dates of officiation in Senior Scale posts. If the Selection Committee of 1987 had met earlier, those who were included in the Select List of 1986 which was prepared on 30.12.86 would have received less than one year's validity of the list for the purpose of promotion to the I.A.S as the Select List is valid only for one year. This would have been unfair to the Select List officers of 1986. If the Select List of 1987 had been for instance prepared in January or February, 1987, that would have wiped off the validity of the Select List of 1986 prepared on 30.12.86 and snatched away the chances of promotion of those included in that list.

8. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The I.A.S Regulation of Seniority Rules are applicable only to the members of the I.A.S. Since the applicant became a member of the I.A.S only on her promotion on 31.5.1988, 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 those rules were valid. 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.

9. 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

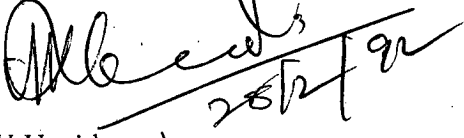
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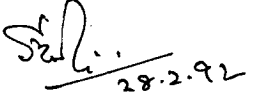
of finalisation of the Select List, we are satisfied that there has not been any undue delay in its approval by the U.P.S.C and the notification of the promotions thereafter. Even if the Selection Committee had met earlier and the Select List finalised five or six months earlier before the amendment 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} ~~national~~ 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 30.12.86.

10. 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 standardises an all India yardstick for ^{the} 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} ~~resulted in~~ 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.

11. 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)
Vice Chairman

n.j.j