

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No 418 of 2012

Order Reserved on 2.3.2015

Order Pronounced on 12/3/15

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Amitabh Thakur aged about 44 years, son of Sri Tapeswar Narayan Thakur, resident of 5/426, Viram Khand, Gomti Nagar, Lucknow .

Applicant

By Advocate Smt. Nutan Thakur

Versus

1. Union of India through Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. Union of India through Secretary, Ministry of Personnel, Public Grievances & Pensions, Government of India, New Delhi.
3. Union of India through Secretary, Ministry of Environment and Forest, Government of India, New Delhi.

Respondents

By Advocate Sri Raj Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (a) To kindly quash those parts of the Guidelines related with promotion matters of the officers of the AIS (IAS, IPS and IFS) which are contradictory to the prevalent Rules as being presented in italics and underlined hereunder.

“There will be no benchmark for assessing suitability of officers for promotions” opposed to Rule 2 (a) of the IPS (Pay) Rules, 2007, IAS (Pay) Rules, 2007 and IFS (Pay) Rules, 2007 which say “benchmark score shall mean the minimum numerical weighted mean score arrived at for overall grading above which an officer shall be regarded as fit for promotion or empanelment, as the case may be, to the next higher grade”



5 "The annual Confidential Reports are the basic inputs on the basis of which assessment is to be made by each Committee" while ACRS have been replaced by Performance Appraisal Report through the All India Services (Performance Appraisal Report) Rules, 2007.

(b) To kindly quash those parts of the Guidelines which leave a huge scope for discretion and arbitrariness as being presented in italics and underlined hereunder- "Each Committee should decide its own method and procedure for objective assessment of the suitability of the candidates."

"the Committee should consider ACRs for equal number of years in respect of all officers falling within in the zone of consideration for assessing their suitability for promotion" and "In the case of each officer, an overall grading being given either Fit for unfit" without specifying the reasons for coming to such a conclusion.

(c) most importantly, to kindly direct the respondents to frame proper Rules and/or Regulations as regards promotion matters of these officers of the All India Services (the Indian Forest Service) in accordance with the provisions contained in Section 3 of the All India Services Act 1951.

2. The facts of the case are that the applicant is an officer of All India Services and is being aggrieved by some part of the guidelines relating to the promotion matters of officers of All India Services which are contrary to the prevalent rules. The O.A. is also filed for quashing of some part of the guidelines which leave a huge scope for discretion and arbitrariness. The learned counsel for the applicant categorically indicated that any promotions which are to be made should be as per the guidelines related with the promotion matters of the officers of All India Services and the guidelines so framed by the respondents for promotions which are contrary to the prevalent rules. Not only this, it is also indicated in the

W O.A. that the each committee should decide its own method and

5 . procedure for objective assessment of the suitability of the candidates. The learned counsel for the applicant has also indicated that the applicant has taken a ground that there is no proper rules and regulations for promotions as regards promotion matters of these officers of the All India Services Act 1951 and the present existing guidelines leave a huge scope for discretion and arbitrariness. As such, it requires to be struck down. It is also fairly indicated by the applicant that earlier he filed a Writ Petition No. 1034(SB) of 2012 before the Hon'ble High Court and the said Writ Petition was dismissed on the ground of availability of the alternative remedy. As such, the present O.A. is filed before this Tribunal.

3. On behalf of the respondents, the reply is filed and the learned counsel for the respondents has also taken a preliminary objections in regard to limitation and has indicated that the present guidelines are framed in the year 1999 and the O.A. is filed in 2012. Not only this, it is also argued by the respondents that on the one hand the applicant is claiming benefit of guidelines and on the other hand the applicant is challenging the same. Apart from this, another objection is raised by the learned counsel for the respondents that as per Section 19(1) of Administrative Tribunal Act, 1985, a person aggrieved by any order can prefer an O.A. before the Tribunal and in the instant case, the applicant is not aggrieved by any order. As such the present O.A. is not maintainable before this Tribunal. He has also relied upon Section 3 (q) of AT Act, which defines the service matters. It is also indicated by the respondents that no PIL is maintainable before this Tribunal. Not only this he has also relied upon the decision of the Hon'ble Apex Court in the case of **Dr. Duryodhan Sahu Vs. Jitendra Kumar Mishra reported in A. I. R. 1999 SC 114.**

4. On behalf of the applicant, rejoinder is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

5. On behalf of the respondent No. 3, counter reply is filed which is taken on record.

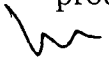
6. The applicant has also filed certain applications in regard to seeking permission to appear in person as well as an application for the connectivity between Annexure No. 1 and 2 in pursuance of order dated 30.12.2012 passed by this Tribunal.

7. Heard the learned counsel for the parties and perused the record.

8. In terms of Article 309 of the Constitution of India read with Article 312 of the Constitution of India the Parliament has enacted the All India Services Act, 1951 for the purposes of regulating the recruitment and conditions of the service of persons belonging to the Indian Administrative Services. According to the said act, and particularly as per Section 3 of the said Act, the Central Government is empowered to make rules to regulate the recruitment and conditions of the service of persons appointed to the Indian Police Service. The relevant provisions of section 3 read as under:-

“3(1) The Central Government may, after consultation with the Governments of the State concerned, including the State of Jammu & Kashmir) and by notification in the Official Gazette) make Rules for the Regulation of recruitment and conditions of service of persons appointed to an all India Service.....”

9. In pursuance of Section 3(1) of the All India Services Act, 1951 the Central Government has framed the India Police Service (Pay) Rules, 2007 which contain rules for regulation of pay of IPS officers on appointment to various posts in the State Cadres as well as on Central deputation under Central Staffing Scheme. Not only this, it is also indicated in the said pay Rules that the appointment of a member of the service to the Senior Time Scale and above shall be regulated as per the provisions in the Guidelines regarding promotion to various grades in the Indian Police Service and accordingly the respondent being the Cadre Controlling Authority for the IPS, has issued promotion guidelines in respects of IPS officers of all the State Cadres to establish a uniform procedure for promotion of IPS offices in different grades throughout the



country, vide letter dated 15.1.1999. It is also to be indicated that the said guidelines has the statutory backing of IPS (Pay) Rules which has been notified by the Central Government in exercise of the powers conferred by sub-section(1) of section 3 of the All India Services Act, 1951 after consultation with the Governments of the States concerned. As per the objections raised by the respondents in regard to the limitation, it appears to be a clear proposition that the said guidelines were framed in the year 1999 and the O.A. has been preferred in the year 2012. Section 21 of the At Act clearly provides about limitation in filing the O.A. For ready reference, Section 21 of the AT Act reads as under:

“21. Limitation-(1) A Tribunal shall not admit an application-

- (a) In a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.**
- (b) In a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.**

Section 19 of the AT Act provides that the applications to be filed before the Tribunal and 19(1) of the AT Act reads as under:-

“19(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.”

It is also to be indicated that Section 3 provides Definitions and 3(q) provides about service matters which reads as under:

“Service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority with the territory of India or under the control of the Government (or Society) owned or controlled by the Government, as respects-

- (i) Remuneration (including allowances), pension and other retirement benefits;**
- (ii) Tenure including confirmation seniority, promotion, reversion, premature retirement and superannuation;**
- (iii) Leave of any kind;**

- (iv) Disciplinary matters; or
- (v) Any other matter whatsoever;"

In the decision rendered by the Hon'ble Apex Court in the case of Ramesh Chandra Sharma Vs. Udham Singh Kamal reported in 2000(2) SLD SC 89, it is observed by the Hon'ble Apex Court that the Tribunal dispose of the application on merit despite the same was filed after more than three years without any application for condonation of delay.

It is observed by the Hon'ble Apex Court on the case of **Dr. Duryodhan Sahu (Supra)**, that the Public interest litigation cannot be entertained by Administrative Tribunal at the instance of total stranger. The Hon'ble Apex Court has been pleased to observe as under:

In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. The word 'order' has been defined in the explanation to sub-s(1) of S. 19 so that all matters referred to in S. 3 (q) as service matters could be brought before the Tribunal. If in that context, Ss. 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated. Thus, the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instances of a total stranger.

In the case of **Gurpal Singh Vs. State of Punjab and Others** reported in AIR 2005 SC 2755, the Hon'ble Apex Court has been pleased to observe as under:-


The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this Court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests' (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail for oblique motives justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature.

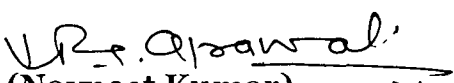
The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

10. On the one part the applicant has challenged the said guidelines which were issued in the year 1999 and on the other part, he is accepted promotions. As such, the same is not admissible in accordance with law. Not only this, as per the provision of Section 19(1) of the At Act, application can be filed against the order through which the applicant is aggrieved for. In the instant case, no such order is filed along with the present original application. On this ground itself, the O.A. is liable to be dismissed. Apart from this, the O.A. is barred by limitation. Since the guidelines were issued in the year 1999 and the applicant has challenged the present O.A. in 2012. Therefore, the ground taken by the respondents is tenable.

11. Considering the observations made by the Hon'ble Apex Court as well as the facts of the case, we are not inclined to interfere in the present O.A. As such, the O.A is fit to be dismissed.

12. Accordingly, O.A. is dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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