

RESERVED

AS

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

O.A. No. 2/89

S.D. Ojha

Applicant

versus

Union of India & others

Respondents.

(2) O.A. No. 62/89

S.P. Saxena

Applicant.

versus

Union of India & others

Respondents.

(3) O.A. No. 358/91

P.K. Mishra

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

As identical question arises in these three cases, which have been filed by I.A.S. officers, who have been promoted from the P.C.S. cadre, the same are being disposed of together.

2. The applicant in O.A. 2/89 was appointed to the U.P. Civil Service and was allotted 1962 as year of allotment. His name was included in the select list of I.A.S. by the selection committee of 1984, whereafter, he was appointed to the post of Joint Secretary(Medical and Health and Family Welfare). He was promoted to I.A.S. w.e.f. 3.8.85. He was sent for

training to Mussoorie from 29.6.87 to 24.7.87. Vide order dated 20.7.87 the applicant was reverted with immediate effect to the P.C.S. cadre post of C.S.D. in the Medical Health and Family Welfare in which he was holding senior scale post in the IAS cadre and directing him to make over the charge of the post of P.C.S. Cadre. The applicant continued ~~to~~ on the post of I.A.S. cadre even during the training ~~to~~ period, and he did not hand over the charge of his post. There was no break in the officiation of the applicant on an I.A.S. cadre till he was appointed to I.A.S. cadre in substantive capacity w.e.f. 22.7.87. He has prayed that the respondents be directed to allot 1981 as year of allotment of the applicant in the I.A.S. on the basis of his continuous officiation on I.A.S. cadre post from 3.8.85 to 21.7.87 and to quash the order dated 2.11.88 and dated 20.7.87, 14.8.87, 25.1.88, 2.3.88 and 16.6.87.

2. The applicant in O.A. No. 62/89 was appointed to U.P. Civil Service and was allotted 1962 as year of allotment and in the year 1984 was promoted to the Senior scale of I.A.S. by duly constituted Selection Committee w.e.f. 2.8.1985 in the same post in accordance with the I.A.S. cadre Rules, 1984. Vide order dated 22.7.87, the applicant and a few others were reverted to the P.C.S. cadre vide Ministry of Personnel notification but after two days yet another notification was issued. Thus this order caused a short break in the continuous

officiation of long continuity. The applicant filed representation and after rejection of the representation, he filed the application. The applicant has challenged the reversion order and has prayed that same be quashed and the respondents may be directed to treat him on the cadre of I.A.S. and his seniority also be counted from 3.8.85 in the Cadre post of I.A.S.

3. The applicant in O.A. No. 358/91 Shri P.K. Mishra was, after selection ~~was~~ appointed as P.C.S. and was assigned 1961 batch. He was also placed in the select list of the I.A.S. ~~and under I.A.S. promotion year~~ 1984 and was appointed as officiating capacity in the cadre post of I.A.S. as Joint Secretary, Finance Department of respondent No. 2. He was one of the officers who were reverted to the P.C.S. cadre vide order dated 22.7.87, although he continued to work on the same post and did not join any other post and yet by another order dated 29.7.82 he was appointed to the I.A.S. cadre.

4. Thus all the applicants were given artificial break of one day and they being deprived of the continuous officiation because of the break ~~in~~ which, according to them is illegal and cannot be done.

5. Before dealing with the contention of the applicants it may be relevant to make reference to certain rules and regulations of Indian Administrative Services Cadre Rules, 1954, Rule 8 of which reads as follows:

Appointment to cadre posts from the select list:

(1) Appointments of members of the State Civil Service from the select list to posts borne to the State Cadre or the Joint cadre of a group of states as the case may be shall be made in accordance with the provisions of rule 9 of the cadre rules. In making such appointments, the State Governments shall follow the order in which the names of such officers appear in the select list.

(2) Notwithstanding anything contained in sub regulation (1), where administrative exigencies so require, a member of the State Civil Service whose name is not included in the Select List or who is not next in order in that select list, may, subject to the aforesaid provisions of the cadre rules, be appointed to a cadre post, if the State Government is satisfied:

(i) that the vacancy is not likely to last for more than three months; or

(ii) that there is no suitable cadre officer available for filling the vacancy.

Provided that where any such appointment is made in a State, the Government shall forthwith report to the Central Government together with the reasons for making the appointment.

Provided further that where administrative exigencies so require, such appointments may be continued in a cadre post beyond a period of three months with the prior concurrence of the Central Government.

Regulation 9(3) of the I.A.S. (Cadre) Rules, 1954 reads as under:

(3) On receipt of a report under sub.rule(2) or otherwise the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction is so issued, the State Government shall accordingly give effect thereto.

Government of India's instructions:

2.1 The Government of India have clarified the scope of Rule 9 of the Cadre rules as follows:

(b) sub rule (3) of the IAS/IPS(Cadre)Rules, 1954 is self-contained and dependant of the provisions contained in sub rules (1), (2) and (4) of the said rule. Sub rule (3) of the rule 9 of the Cadre Rules empowers the Central Government to Give directions to the State Government at any time to terminate the temporary appointment of a non-cadre officer to a cadre post, even without any report from the State Government whether the period is less than three months than six months. The words "or otherwise" occurring in sub rule (3) of Rule 9 of the Cadre Rules are of great significance in this context and leave no scope of doubt."

5. The respondents(State Govt.) has resisted the claim of the applicant stating that the proposal of the State Government was sent in April/May, 1987 for appointment of 14 Civil Services officers ^{by} ~~for~~ appointment

promotion to the I.A.S. and select list was not in accordance with promotion regulation. The Central Government ~~via~~ its letter dated 26.6.87 directed the State Government under sub rule 3 of cadre regulations to terminate the officiating appointment of the selected officers. This, according to the State Government, was in view of the law laid down by the Hon. Supreme Court in its judgment in Union of India vs. G.N. Tewari (1986 SCC (LMS) 166). On behalf of the applicant it was contended that if there is any error on the part of the central Government or State Government the officer who has officiated cannot be made to suffer in the assignment of the orders of allotment and the order by which the applicant has been deprived of period of continuous officiation, by a nominal break, was obviously malafide order.

In G.N. Tewari vs. ~~Exxxx~~ Union of India and ors (AIR 1986 SC 348) rule 9~~(ix)~~ of the cadre rules, a reference to which has already been made provides for ~~xxxxxx~~ appointment of non cadre officers only when the vacancy is not likely to last for more than three months or that there is no suitable cadre officer available for filling the ~~vacancy~~. It further provided that where in any State a person other than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Govt together with the reasons for making the appointment provided that a non-select list officer or a select in the list officer who is not next in order ~~xxxx~~ select list shall be appointed to a cadre post only with the prior concurrence of the Central Government. Sub

3 of rule rule/9 provides that on receipt of a report under sub rule(2) or otherwise the Central Government may direct that the State Government shall terminate the appointment of such person and appoint there to a cadre officer, and where any ~~express~~ direction is so issued, the State Government shall accordingly give effect thereto. Rule 9 sub rule (4) provides that where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available which will be given direction to the State Government in the light of the advice to the Central Government. In G.N. Tewari(Supra) the court laid down amongst other the following proposition:

- i) the continuous officiation in the cadre post from the date of commencement of such officiation pursuant to the appointment by State Government to cadre post is in accordance with Rule 9 of the cadre rules and the same would ensure to their benefit for reckoning seniority under Rule 3(3) of the seniority Rule.
- ii) Such appointees are also entitled by reason of legalfiction contained in Explanation 2nd the Rule 3(3) (b) of the seniority Rules to have the entire period of their continuous officiation without a break in senior post

from the date of their officiating appointment till the date of their ~~affixing~~ appointment ~~fix~~ into the service counted for purposes of determining their year of allotment under Rule 3(3) (b) of the seniority Rules.

iii) ~~None~~ Neither prior approval of the Central Government to the appointment of a non cadre officer to a cadre post nor existence of a vacancy is a condition precedent to such a ppointment under Rule 9 of the cadre Rules.

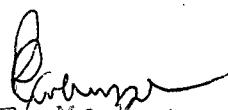
iv) The failure of the Central Government to give a direction under Rule 9(3) to terminate the appointment of the respondents implies that their continuous officiation on a cadre post had the tacit approval of the Central Government particularly when as required by it State Government submitted proposal for approval of non.cadre officers on cadre post which was followed by State Government report and Central Government approval.

v) There is no provision inthe Cadre Rules empowering the Central Government to direct curtailment of period of officiation of a non-cadre officer on a cadre post for purpose of reckoning his year of allotment under Rule 3(3)(6) of the seniority Rules, Such a power can not be spelt out from Rule 9 (2) of the Cadre Rules which confers powers on the Central Government to direct termination of appointment of a non cadre officer to a cadre post.

In the instant case the names of the applicants are in the select list but they were allowed to officiate on cadre post which they continued to do but the matter was reported to the Central Government which did not agree to their continuation to hold a senior post and that is why the said order was passed. In case the Central Government would not have done so then it could have been taken as tacit approval on its behalf under rule 9(iii) of the cadre Rules the Central Government was within its power to issue directions in pursuance of which reversion order was passed and the State Government was also bound to do so as it could not have allowed these officers to continue beyond the period of 2 years as per provision of the Code Rules. It is true that the Central Government did not terminate the same, for no other reason and it was a case of notional break only, i.e. the break of one day and this was done in the interest so that the senior officer in the list who otherwise would have suffered and their seniority would have been affected. The seniority Rule 3 (3)(b) referred to above is very explicit in the case of break in service. If there is a break the entire period cannot be counted towards seniority, there being no continuity, a break even for a day, is a break putting an end to the continuity.

6. The next question there being break even then it cannot be deemed that the officiating appointment continued so as to give benefit of continuous officiation to those who have been continuing after this break and were to

be posted on the said senior post even promoted to the I.A.S. cadre. The break, in these circumstances, when they were promoted to I.A.S. cadre after break, cannot be said to be malafide or arbitrary or unfair. The reason behind the break was sound reason and was designed and calculated to do justice between senior and juniors by not affecting or reversing their positions interse. The reversion order, in the circumstances was only a consequential order. The reversion order, though formal in nature, in the circumstances cannot be said to be illegal or in violation of any law. In view of the fact that the period of continuous officiation was broken and the applicants are not entitled to count the earlier period towards seniority or continuation they have failed to make out any ground for grant of relief claimed by them. Accordingly the applications deserve to be dismissed and are so dismissed. No order as to costs.


A. M. Member.
Vice Chairman.

Shakeel/-

Lucknow. Dated: 7th January 1993