

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Original Application No. 92 of 1992
this the 22nd day of December, 1995.

HON'BLE MR JUSTICE B.C. SAKSENA, V.C.
HON'BLE MR V.K. SETH, MEMBER (A)

Dr. Indu Prakash Aron, aged about 50 years, S/o
Dr. P.C. Aron, presently working as Chairman, U.P.
Public Services Tribunal No. 3., 625-Jawahar Bhawan,
Lucknow.

Applicant

By Advocate : Sri D. Mehrotra

Versus

Union of India through the Secretary, to Govt. of
India, Ministry of Personnel P.F. and Pensions
Department of Personnel and Training, New Delhi.

2. State of U.P., through the Secretary to Govt.
of U.P., Appointment Department, Civil Secretariat,
Lucknow.

Respondents

By Advocate : Sri A.K. Chaturvedi

O R D E R

V.K. SETH, MEMBER(A)

By means of this O.A., the applicant has
prayed for quashing the order dated 18.11.1991 of
the respondents by which his representation was
rejected and he has also prayed that he be
declared entitled to the benefit of the post in
the scale of Rs. 7300-7600/- from the date 1963 batch
was promoted including payment of arrears of salary.

LS

2. The claim of the applicant has been contested by the respondents and pleadings have been exchanged between the parties. We have also carefully considered the submissions made by the learned counsel for two sides during the course of hearing.

3. The applicant was appointed to the I.A.S. w.e.f. 3.7.1969 against the post reserved for Ex-Army Officer and was allotted 1964 as the year of allotment.

4. The main grounds advanced by the applicant in support of his claim are that the respondent ^{contravening} No. 2 viz. State of U.P. are violating the provisions of Rule 10 of I.A.S. Cadre Rules and denying him the benefit of pay-scale of Rs. 7300-7600/- from 1.1.1989. The next ground taken by the applicant is that it has been practice of the Govt. of U.P. to promote I.A.S. Officers in super time scale in less than one year's time and to promote entire batch or even two batches ^{of} on the same date regardless of the number of vacancies.

5. We shall now discuss the grounds taken by the applicant :

Rule 10 of I.A.S. Cadre Rules reads as under:

"Report to the Central Government of vacant cadre posts :- Cadre posts shall not be kept vacant or held in abeyance for period exceeding six months without the approval of the Central Government. For this purpose, the State Government shall make a report to the Central Govt. in respect of the following matters, namely :-

- (a) The reasons for the proposal;
 - (b) the period for which the State Govt. proposes to keep the post vacant or held it in abeyance ;
 - (c) the provision, if any, made for the existing incumbent of the post; and
- 4.5

- (d) whether it is proposed to make any arrangement for the performance of the duties of the post to be kept vacant or held in abeyance, and if so, the particulars of such arrangements."

In regard to compliance of the above rule, while admitting that certain posts were vacant, the State of U.P. in their Counter affidavit have stated that half yearly cadre returns, showing posts held in abeyance or kept vacant for a period exceeding six months are regularly sent to the Govt. of India, Department of Personnel. In their Counter affidavit, ? Union of India has not specifically [?] connected upon on the contention of the applicant but inter alia stated that the applicant had no case for promotion in the year 1989 and the action taken to promote him in the year 1991 was perfectly in order as per need of State Govt. In his Rejoinder affidavit, the applicant has not questioned the fact of sending of returns but argued that merely sending of periodical returns to the Central Govt. does not imply the automatic approval of the Govt. of India and thereby reiterating his contention regarding non-compliance of Rule 10 of the Cadre Rules. In our considered view, the respondent No. 2 namely ^{be} State of U.P. cannot ~~be~~ faulted on this ground as they have acted as per recruitment rules. Obviously, if the respondent no. 1 namely Union of India had not found the reasons furnished by the State of U.P. ^{as} in their returns/plausible or satisfactory, they would have sought clarification in the matter from the State administration. That not being the case nor any assertion to that effect being made

h k

before us, it could be safely assumed that Union of India found the reasons in the returns furnished by the State of U.P. as convincing.

6. Coming now to second argument of the applicant regarding promotion of one batch or two batches simultaneously irrespective of number of vacancies. The applicant on this ground has claimed his promotion from 1.1.1989 from the date when 1963 I.A.S. batch was promoted. We note in this connection that as per averments of the applicant himself he has been allotted 1964 batch for the purposes of seniority. We, therefore, fail to understand as to by what right he is claiming parity with the senior batch. He has, ofcourse, mentioned about the convention of more than one batch being promoted simultaneously but then convention is one matter and rules another. No material has been placed before us to establish the right of the applicant for promotion alongwith his senior batch.

7. In support of the applicant's case, the learned counsel for the applicant has cited certain observations of their lordships of Hon'ble Supreme Court in the case of Syed Khalid Rizvi & others Vs. Union of India & others decided on 29.11.92 (1993 Supp (3) SCC 575). This case relates to the question of inter se seniority between the Indian Police Service Direct Recruits and U.P. State Police Service, Special Grade Deputy Superintendent of Police for short promotees. In the present case, no such issue arises and, therefore, the same

156

is distinguishable on facts. Nevertheless, we may advert to the observation to which our attention has been drawn in para 14 of the judgment. Their lordships, while discussing Regulation 8 of the Promotion Regulations read with Rule 9 of the Cadre Rules. ~~These lordships~~ interalia observed that "when both cadre officers or select-list officers are not available, then only non select-list officers could be temporarily appointed." It is also observed that "the condition precedent is that the post shall not last for more three months, if it exceeds three months then the "prior concurrence of the Central Government" is mandatory". In our view, Rule 10 of I.A.S. Cadre Rules does not stipulate prior concurrence, it only requires that the State Govt. to make a report to the Central Govt. with the reasons and other details. After the matter is reported to the Central Govt., the decision rests with them. There is no doubt that there is a default on the part of the Central Govt. in confirming the action of the State Govt. In our view, this default by the Central Govt. per se does not create any right in the applicant. Another part of the judgment in Khalid Rizvi's case (supra) to which our attention has been invited is para 31 which interalia states " No employee has a right to promotion but he has only the right to be considered for promotion according to rules-----". In the present case, no rule has been cited before us to support the claim of the applicant for his promotion to the scale of Rs. 7300-7600/- in 1989 or alongwith 1963 batch of I.A.S. Both the respondents have stated that officers to the pay-scale of Rs. 7300-7600/- are to be promoted

and are promoted dependent of the exigencies as and when required. As against this, the argument of the applicant is that posts were vacant and he has again referred to Rule 10 of the Cadre Rules. As far posts being vacant, ~~since~~ the State Govt. did not desire to fill the same and that is why they sent periodical returns to the Central Govt. More-over mere existence of a vacancy does not give the right of promotion to an employee especially when nobody junior has been considered or promoted, as is admittedly ^{the} fact in the present case.

8. We may incidently mention that the present case is very similar to the case of A.K. Das Vs. Union of India & others decided by this Bench on 28.11.95 (O.A. No. 287/92) and we had not found any merit in that case and dismissed the same. In the present case also, we do not find any merit in the claim of the applicant and the O.A. is hereby dismissed.

9. In the facts and circumstances of the case, the parties shall bear their own costs.

L.K.
Member (A)

B. Chakravarty
Vice-Chairman

Lucknow; Dated: 22.12.95
GIRISH/-