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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Registration C.A.No.349 of 1990(L)

M.P. Jain Applicant

Versus

Union of India & Others Respondents

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

Hon. Mr. A.B. Gorthi, Member (A)

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

The applicant started his service career as per U.P. Civil Service (Executive Branch) (hereinafter referred to as PCS) with effect from July 15, 1961 on the result of the competitive examination and interview held by the U.P. Public Service Commission and was allotted 1960 as his year of allotment for purposes of seniority in the said service and was subsequently promoted in the IAS cadre after inclusion of his name in the select list. The applicant has prayed this Tribunal to direct the respondents 1 & 2 to allot the applicant 1981 as his year of allotment in the IAS and place his name in the current gradation list of IAS of UP Cadre (as on January 1, 1990) published by respondent No. 2 below Shri K.L. Gupta (Sl. No. 358) and above Shri B.E. Chaturvedi (Sl. No. 359) and quash the Govt. of U.P. letter dt. 30.4.90 and the Govt. of India letter by which the applicant's representation dt. 7.5.89 has been rejected by the Govt. of India for correct fixation of his seniority in the IAS after summoning the same from respondent No. 1. It is further prayed that the Govt. of India letter dated 7.2.1990 so far as it relates to assignment of 1983 as the year of

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allotment of the applicant in the IAS may also be declared illegal and inoperative.

2. The applicant who had already been promoted to a Senior scale was transferred from Ghaziabad to Basti as Managing Director, Spinning Mills in 1980. The applicant requested for his transfer to Western U.P. as his children were studying in Delhi and a change of University was involved. The Chief Executive Officer, Noida Ghaziabad requested the Chief Secretary who after appreciating the circumstances of the applicant diverted the applicant to Noida. According to the applicant, this led to start of the move for damaging the career and the vindictiveness found expression in initiating two enquiries in the year 1980-81. A pseudonymous complaint was received in the Appointment Department which after enquiry was rejected having found baseless. Even then Vigilance enquiry continued despite representation made by the applicant and the Vigilance Wing after enquiring the matter reported that the charge is baseless. But the time taken by the enquiry caused an irreparable loss to the career of the applicant. Another matter was also raked up. In 1978, the District Magistrate, Ghaziabad asked the applicant to enquire and report about the complaint made by certain farmers against the Special Land Acquisition Officer, Ghaziabad for withholding the payment of their compensation. The applicant after enquiring the matter submitted his report to the District Magistrate stating that the complainants were declared title-holders of the land way back in 1972 and that no appeal against the judgement/

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decree had been filed so far though a period of six years had elapsed against the prescribed period of limitation of one month. This matter was also entrusted to the Vigilance Wing. The Vigilance Wing enquired the matter and reported to the Govt. that the applicant was not at all ^{to be} ~~fault~~ in any manner. The applicant was completely exonerated in December, 1988 with the result the applicant who was selected for the PCS high scale Rs.2300-2700 on 17.8.87, his promotion was not released. He was selected in the IAS in 1984, 1985, 1987 and 1986 and his promotion to the IAS was released only on 13.3.89. The Selection Committee which met in the year 1987 for selection to higher scale post, the outstanding service record of the applicant was adjudged suitable for appointment to the higher post in the PCS cadre but not promoted due to pending disciplinary proceedings against him. The U.P. Administrative Tribunal before which the matter was referred, exonerated the applicant in the year 1988. It was thereafter the applicant was given notional promotion to the PCS cadre from 18.8.87 when his juniors were promoted in the higher scale. The applicant after this exoneration was promoted to the IAS on 13.3.89 as stated earlier. The plea on behalf of the applicant is that according to Rule 3(3) (ii) of the IAS (Regulation of Seniority) Rules, 1987 the Govt. of India have allotted him 1983 as his year of allotment for fixation of his seniority in the IAS in their letter dated 7.2.90 on the basis of inclusion of his name in the select list of IAS prepared in 1987. The ~~200~~ name of the applicant

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had been included in the select list of the IAS prepared in the years 1984, 1985 and 1986 but he was not appointed to the IAS on 17.10.86 due to the continuance of Vigilance inquiry/disciplinary proceedings against him with the result his junior Shri B.B.Chaturvedi was appointed to the IAS cadre. According to the applicant he was totally exonerated in the departmental proceedings on the completion of Vigilance inquiry, all the allegations against him were found to be baseless. The applicant was, therefore, entitled to be allotted 1981 as his year of allotment on the basis of inclusion of his name in the select list of the IAS drawn up in the year 1985 and his name should have been shown below Shri K.L.Gupta and above Shri Brij Bhushan Chaturvedi in the gradation list of IAS of the U.P. Cadre published on 1.1.1990, in accordance with the provisions of Rule 3(3)(ii) of the IAS (Regulations of Seniority) Rules, 1957. The applicant has also pleaded that it is provided in Section 2(b) of the All India Service (Conditions of Service Residuary matters) Rules, 1960 (hereinafter referred to as Residuary matter rules) that where the Central Govt. has not made regulations to regulate any matters relating to conditions of service of persons appointed to the All India Services such matters shall be regulated in accordance with the rules required and orders applicable to officers of State Civil Service Class I subject to such exceptions and modifications as the Central Govt. may by order in writing make. The State Govt. has introduced sealed cover procedure in the matter of promotion and the G.O. dt. 30.11.83

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provides that " after the conclusion of the Vigilance Inquiry/disciplinary/criminal proceedings if the concerned Govt. servant is totally exonerated and he has been found fit for promotion, he is made permanent on the post reserved for him. It is also provided that where no post has been reserved for such Govt. servant if he is totally exonerated after conclusion of disciplinary/criminal proceedings/Vigilance enquiry and he has been adjudged suitable for promotion by the Selection Committee he shall be given notional promotion from the date his junior has been promoted to higher post and his pay will be fixed as if he continued to hold the higher post from notional date of his promotion". The contention of the applicant is that in view of the sealed cover procedure the respondents should have reserved one post for him in the year 1985 but they did not do so. The applicant gave representation to this effect but he was informed that his representation has been rejected. Thereafter he approached this Tribunal. The applicant has made a reference to the law laid down by the Hon'ble Supreme Court in Civil Appeal No.4474-76 of 1989 in the case of C.O.Arunkugam and Others Vs. State of Tamil Nadu and others in which promotions of persons against whom charge-sheet has been framed in disciplinary proceedings or chargesheet has been filed in criminal case, to avoid arbitrariness the consideration of promotion may be deferred till proceedings are concluded. After exonerated the employee if found suitable be given promotion with retrospective effect from the date when his junior has been promoted. The respondents have contested

the case of the applicant. They have filed reply. His immediate junior in the select list was appointed in 1987 and one post was reserved for him and he could not have been appointed due to Vigilance Inquiry and the same position have in subsequent years and the applicant could not be appointed. He was only appointed after exoneration orders were issued. It is true that the IAS (Regulation of Seniority) Rules are silent on the point. The applicant was exonerated of all the charges and the proceedings against him ended in his favour and the complaints against him were found to be false. Since the applicant was exonerated of all the charges, it was the duty of the administration to promote the applicant from the date his junior has been promoted but he was deprived of the promotion because of the disciplinary proceedings which ultimately found to be untrue and without any basis. The applicant ~~should~~ ^{could} be deemed to have been promoted with effect from his junior was promoted and the notional promotion which consequently could be given and the same may also result in changing the year of allotment and seniority. So far as the plea of relaxation is concerned, it can undoubtedly be granted by the Central Govt. which alone ~~have~~ ^{has} the power for the same under All India Service (Conditions of Service Residuary matters) Rules, 1960 and it appears why the Central Govt. should not consider the same. Accordingly, we dispose of this petition directing the respondents to consider the case of notional promotion of the applicant after changing his date of seniority and place him in the seniority list from the date his junior has been promoted. This exercise will be done

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within a period of three months. It is expected that the Central Govt. will consider the question of relaxation in favour of the applicant who is without any fault and he has been involved unnecessary ⁱⁿ ~~in~~ the circumstances mentioned above. The applicant should not be made to suffer for his no fault. The Govt. will consider and decide the question of relaxation within a period of three months from the date of the receipt of any such application by the applicant. There will be no order as to costs.

Shanbhag S
Member (A)

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Vice Chairman

Dated the 5 July, 1991.

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