

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH

...

OA 567/92 with OA 666/92

Lucknow this the 21st day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

Hon'ble Shri A.K. Misra, Member(A).

OA 567/92

Dr. Jai Narain Dubey,  
S/o late Shri B.R. Dubey,

Joint Secretary, Govt. of UP,  
Planning Department, Secretariat,  
Lucknow.

... Applicant.

(By Advocate Shri D.S. Chaube)

Versus

1. Union of India, through  
The Secretary,  
Ministry of Personnel, Public  
Grievances and Pensions,  
Department of Personnel & Training,  
New Delhi.
2. State of Uttar Pradesh through the  
Chief Secretary to Govt. of UP,  
Appointment Department, UP Civil  
Secretariat, Lucknow. ... Respondents.

(By Advocate Shri A.K. Chaturvedi)

OA 666/92

Ramash Chandra Dwivedi,  
son of Shri S.B. Dwivedi,  
R/o Chandra Lok,  
Aliganj, Lucknow.

... Applicant.

(None present)

Versus

1. Union of India, through  
the Secretary,  
Department of Personnel & Training,  
New Delhi.
2. State of UP through the  
Chief Secretary to the Government,  
Civil Secretariat,  
Lucknow. ... Respondents.

(By Advocate Shri A.K. Chaturvedi)

JB

## O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(3).

In the application filed by Dr. J.N. Dubey (OA 567/92), Shri D.S. Chauba learned counsel has submitted that he is only pressing the claim regarding reduction in emoluments to the applicant issued by the respondents in the provisional pay slip dated 23.5.1992.

2. The brief relevant facts of the case are that the applicant was recruited in the Indian Administrative Service (IAS) under the provisions of the Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to as 'the Recruitment Rules') in 1989. He was initially in the cadre of U.P. Service of Engineering, Irrigation Department. Learned counsel has submitted that the applicant's pay fixed by the respondents in the IAS is incorrect. He has submitted that at the time of the applicant's appointment as IAS, he was in the pay scale of Rs.5900-6700 with pay of Rs.6500/-. He has submitted that his next increment was due on 1.1.1990 which could have increased to Rs.7300/- after making addition of three stagnation increments, whereas his grievance is that in the IAS he was fixed at Rs.5700/-. He was confirmed in the IAS in July, 1990. He has referred to the letter from the Government of India - Respondent 1 dated 2.2.1996 (Annexure-11). In this letter, it has been stated that the applicant's pay is fixed at Rs.5700/- from 10.7.1989 in pursuance of the Notifications dated 6.5.1994 and 14.7.1995. In addition, it is also stated that he will also be eligible to receive stagnation increments in accordance with Rule 5 of the IAS (Pay) Rules, 1954 (hereinafter referred to as 'the Pay Rules'). The applicant's counsel has contended that the applicant's pay should have been fixed in terms of the Orders issued by the State Government for PCS officers dated 1.12.1994 and 6.2.1995. This has, however, not been done and Respondent 2 had further issued O.M. dated 1.4.1998 by means of which their earlier orders have been modified allowing compensatory pay and other allowances

13

in the revised pay scale to another set of employees, namely, <sup>those</sup> promoted to IAS. ~~from~~ the State Civil Service (SCS). He has submitted that the same benefits should also be admissible to the applicant. Learned counsel has submitted that there is no justification in denying the benefits of the aforesaid State Government circulars to him when the State Government has allowed the benefits to the other group of employees. He has, therefore, very vehemently submitted that by promoting the applicant to IAS, he has suffered monetary loss which has caused him harassment and denial of higher emoluments which he would otherwise <sup>have</sup> earned if he would have continued in <sup>the</sup> previous service. He has submitted that as per the O.Ms issued by the State Government/Respondent 2, ~~the~~ injustice has been done to the applicant. He has, therefore, prayed that in accordance with the O.Ms dated 1.12.1994 and 6.2.1995, and subsequently modified and clarified by O.Ms dated 1.4.1998 and 29.6.1998, he may be given pay protection with all consequential benefits. He has relied on the judgements of the Supreme Court in Yukti Nath Jha & Ors. Vs. UOI & Ors. (1998 SCC (L&S) 1751), Kamlekar & Ors. Vs. UOI & Ors. (1999 SCC (L&S) 919) and D.S. Nakara Vs. UOI (AIR 1983 SC 130). He has contended that discriminatory treatment has been given to the applicant with regard to his pay fixation in the IAS and there is no rational basis for not giving him the same benefits given by the State Government to other persons from Provincial Civil Service inducted into IAS.

3. Learned counsel for the applicant has also submitted that earlier an application had been filed in the State Public Services Tribunal. That application was disposed of by the State Tribunal by order dated 9.3.1999 stating that the ~~tribunal~~ Tribunal has no jurisdiction in the matter and the claim is not maintainable and dismissed the same.

4. The respondents in their reply have controverted the above submissions. Respondent 1 has submitted that the counter affidavit filed by them in the other case filed by Shri R.C. Dwivedi (OA 666/92) is adopted as written statement in the present case also. Shri A.K. Chaturvedi, learned counsel has submitted that the applicant Shri J.N. Dubey has nowhere submitted that his pay has not been fixed in accordance with the Rules, that is the Pay Rules. He has submitted that the applicant has <sup>been</sup> selected under the provisions of Rule 4(1)(c) and Rule 8(2) of the Recruitment Rules. The State Government had also asked the applicant for unconditional option with regard to his pay which has been fixed in the senior scale of IAS in accordance with the Pay Rules, as amended vide Notification dated 6.5.1994 w.e.f. 9.5.1994. Learned counsel has explained that the letter issued by Respondent 1 dated 2.2.1996 has made reference to this Notification with regard to the refixation of applicant Dr. J.N. Dubey, a non-State Civil Service (SCS) officer. He has contended that as the applicant is a non-SCS officer, his pay has been duly fixed in accordance with the Pay Rules and there is nothing illegal or arbitrary about the same. He has submitted that in accordance with the Recruitment Rules read with the Appointment Regulations, the applicant's pay has been correctly given at Rs.5700/-. He has submitted that the State Government of UP issued orders dated 1.12.1994 and 6.2.1995 for officers who have been promoted under Rule 8(1) of the Recruitment Rules in anticipation of <sup>the</sup> approval of the Government of India which, however, has not accorded the approval. The State Government issued a further order dated 1.4.1998. Learned counsel has submitted that these orders have been issued by the Government with respect to a different ~~order~~ class of officers who have been promoted to IAS due to administrative and other compulsions. However, his contention is that once the applicant has been

appointed in the IAS cadre, the competent authority to fix his pay is the Government of India which in consultation with the State Government has ~~been~~ done in accordance with the Pay Rules. He has, therefore, submitted that the applicant cannot claim parity of pay based on letters issued by the State Government with regard to the PCS officers who come into the IAS, for whom the State Government is the competent authority. He has drawn our attention to the letters issued by the Government of India, Respondent 1 dated 28.4.1995 and 18.2.1996 ~~canceling the orders issued by the State Government asking them to cancel the aforesaid orders.~~ This was followed by another letter dated 18.11.1996 from the Government of India in which it has been stated, inter alia, that the letter dated 1.12.1994 issued by the State Government with regard to the pay fixation of promoted IAS officers, was completely in contravention of the relevant Rules and Regulations. They have also written to the <sup>State</sup> Government to rescind the said orders. The respondents have also submitted that the applicant's pay has been correctly fixed ~~and the respondents~~ ~~have also submitted~~ vide their letter dated 18.7.1991 and it was only after six and a half years or so that Shri Dwivedi had made <sup>a</sup> subsequent representation on 14.12.1997 which is an after thought.

5. Learned counsel has also distinguished the judgements relied upon by the learned counsel for the applicant. He has submitted that as the pay fixation in both the above cases has been correctly done in accordance with the Rules, there is no question of discrimination or arbitrary action. He has also pointed out that the validity of the Pay Rules has not been challenged by the applicant. He has submitted that in Vijay Nath Jha's case (supra) relied upon by the applicant which dealt with the <sup>IAS</sup> officers promoted from the State of Bihar, reference has been made to <sup>reduction of</sup> ~~basic~~ pay which is not the position in the present case. He has also submitted that as per the letter issued by the Government of

modified from time to time, including the Notification dated

India - Respondent 1 dated 2.2.1996, the applicant has also been granted stagnation increments when due in accordance with Rule 8 of the Pay Rules. According to him, the other cases relied upon by the learned counsel are also not applicable in the facts and circumstances of the case as the pay fixation of IAS officers from different categories has been done in accordance with the Pay Rules which Rules themselves have not been challenged. In the circumstances of the case, learned counsel has submitted that the facts and issues in OA 567/92 and OA 666/92 are the same. He has, therefore, prayed that as there is no merit in the

applications, the same may be dismissed. He has relied on the judgement of the Supreme Court in/ UOI & Ors. (1993Supp(3)SCC575) 5. We have perused the pleadings in OA 666/92. We

find that the relevant facts and issues raised in this OA are similar to that raised in OA 567/92. In OA 666/92, the applicant has prayed for quashing of the order issued in July, 1998 giving him the allotment year as 1981 and the order dated 28.2.1998 rejecting his representations against pay fixation. It is seen from the reply filed by the respondents that the year of the allotment of the applicant has been revised from 1981 to 1980. Therefore, the other relief which is remaining is being dealt with along with the claim of Dr. J.N. Dubey in OA 567/92.

7. On careful perusal of the relevant Rules, that is the Recruitment Rules read with the provisions of the Pay Rules, the applicants in the above two cases have been appointed to IAS cadre under the provisions of Rule 8(2) and their pay fixed accordingly by the competent authority, that is by the Government of India in consultation with the State Government of UP. It is relevant to note that the validity of the Pay Rules has not been challenged by the applicants. The maximum permissible pay has been fixed by the competent authority in accordance with these Rules, as modified from time to time, including the Notification dated

/Syed Khalid  
Rizvi Vs.

6.5.1994. In the facts and circumstances of the case, it cannot be held that the pay fixation done by the competent authority under the Rules is either arbitrary or discriminatory as alleged by the learned counsel for the applicant in OA 567/92. No doubt, the State Government has issued certain orders with regard to the IAS officers who have been promoted in accordance with Rule 8(2) of the Recruitment Rules which is stated to have been issued by them in anticipation of the approval of the Government of India, in the counter affidavit filed on behalf of Respondent 2.

2. However, it is also apparent from the letters issued by the Government of India, Respondent 1, subsequently on 20.4.1995, 19.2.1996 and 18.11.1996 that they have requested the State Government to rescind the said orders dated 1.12.1994 which has admittedly not been done so far. It is not the case of the applicants that their pay has not been fixed in accordance with the Pay Rules by the competent authority, that is <sup>the</sup> Government of India. What they are claiming in the present applications is parity in pay with another category of officers who have also been promoted to IAS from SCS for whom separate Rules exist. In the circumstances of the case, therefore, it cannot be stated that the respondents have acted either in <sup>an</sup> arbitrary or discriminatory manner, as contended by Shri D.S. Chaube, learned counsel. The applicant has accepted his promotion to the IAS cadre in accordance with <sup>and his pay has been fixed</sup> the Recruitment Rules/by the letter issued by Respondent 1 dated 2.2.1996. It is also seen that in <sup>the</sup> case of Shri J.N. Dubey, a non-SCS officer like Shri Dwivedi, applicant in OA 666/92, it has also been stated that he will be eligible to receive stagnation increment under Rule 5 of the Pay Rules. His pay has ~~also~~ been fixed at Rs.5700/- from 10.7. 1989 on the basis of the later Notifications issued by the Govt. of India dated 6.5.1994 and 14.7.1995, referred to above. In the facts and circumstances of the cases, the contention

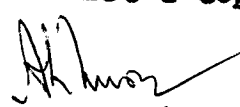
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competent  
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of the applicants that their pay should be brought on par with the pay fixed for SCS officers is not tenable. We, therefore, find no good grounds to justify any interference in the matter.

8. We have also considered the other contentions raised on behalf of the applicants, but do not find any merit in the same. The cases relied upon by Shri Chaube, learned counsel will also not assist the applicants. In Yukti Nath Jha's case (supra), it has been stated that on promotion, the applicant's pay was reduced. That is not the position in the present case. With regard to Kamalkar's case (supra), learned counsel for the applicant had submitted that on promotion from different cadres, they cannot be treated separately. However, under the relevant Recruitment Rules and the Pay Rules which have not been challenged in the present cases, the pay has to be fixed by the competent authorities in accordance with those Rules. The observations of the Supreme Court in Syed Khalid Rizvi's case (supra) relating to appointment of an IPS officer are relevant with regard to issues relating to promotion of All India Services Officers.

9. Learned counsel for the applicant has submitted that as the State Services Tribunal had not given him the relief, then it is only this Tribunal which could do so. But that can be done only in accordance with law. However, for the reasons given above, we find no merit in these applications. Accordingly, OA 567/92 and OA 666/92 are dismissed. No order as to costs.

10. Let a copy of this order be placed in OA 666/92.

  
(A.K. Misra)  
Member(A)

  
(Smt. Lakshmi Swaminathan)  
Vice Chairman(J)

'SRD'