

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 29-10-87

APPLICATION NO 453 /8 7(F)

W.P.No. _____

APPLICANT

Shri D. Nagsetti

To

Vs

RESPONDENTS

The Secy, M/o Personnel & Trg, Public
Grievances & Pension, New Delhi & 2 Ors

1. Shri D. Nagsetti
423, Upper Palace Orchards
Bangalore - 560 080

2. The Secretary
Ministry of Personnel & Training,
Public Grievances & Pension
Department of Personnel & Training
New Delhi

3. The Chief Secretary to Govt. of Karnataka
Department of Personnel & Administrative Reforms
Vidhana Soudha
Bangalore - 560 001

4. The Accountant General in Karnataka
Park House Road
Bangalore - 560 001

5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

6. Shri S.M. Babu
State Govt. Advocate
C/o Advocate General's Office, KAT Unit, Indiranagar, Bangalore - 560 038

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~XXXX~~

~~XXXXXX~~ passed by this Tribunal in the above said application
on 9-10-87.

RECEIVED 6 copies 21/11/87

Diary No 1353/CR/87

Entered Date: 20/11/87
Encl: as above.

dc

By Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

*Copy Received
S. M. Babu
H.C.P
2/11*

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 9TH DAY OF OCTOBER, 1987.

PRESENT:

Hon'ble Mr. Justice K.S.Puttaswamy, .. Vice-Chairman.

And:

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATION NUMBER 453 OF 1987.

D.Nagsetti,
S/o Siddalingappa,
Aged 63 years,
423, Upper Palace Orchards,
Bangalore-560 080.

.. Applicant.

v.

1. The Union of India
by its Secretary, Ministry of Personnel
and Training, Public Grievances and Pension,
Department of Personnel and Training,
NEW DELHI.
2. The State of Karnataka
by its Chief Secretary,
Department of Personnel and Administrative
Reforms, Vidhana Soudha,
Bangalore
3. The Accountant General in Karnataka,
Bangalore. .. Respondents.

(By Sri S.M.Babu, Govt. Advocate for R-2)
(By Sri M.Vasudeva Rao, Standing Counsel)

This application having come up for hearing this day, Vice-Chairman, made the following:

O R D E R

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').

2. Sri D.Nagsetti, applicant before us, was a substantive member of the Karnataka Administrative Service ('KAS') or State Civil Service (Executive). As on 1-1-1965, he was eligible for appointment by



7. On this and certain other claims, with which we are not now concerned, the applicant approached the High Court of Karnataka in Writ Petition No.20756 of 1983 and the same was disposed of on 4-4-1986 (Annexure-RI) by Chandrakantaraj Urs, J. with an observation that it was open to Union Government to re-examine the same and pass appropriate orders thereon. Aggrieved by the same, the applicant filed Writ Appeal No.780 of 1985 before the High Court, which on 30-10-1986 disposed of the same with a direction that the said claim should be examined and decided within the time allowed in that order. In obedience to these orders, the Union Government re-examined the claim of the applicant and by its order dated 18-3-1987 (Annexure-A10) rejected the same. Hence, this application.

7. In justification of the order made by Union Government, respondents 1 and 3 have filed their separate but identical replies. Respondent-2 has adopted the same.

8. The applicant appeared in person and argued his case. Sri M.Vasudeva Rao, learned Additional Central Government Standing Counsel has appeared for respondents 1 and 3. Sri S.M.Babu, learned High Court Government Pleader has appeared for respondent-2.

9. Sri Nagsetti contends that on a true construction of Rule 9 of the Cadre Regulations and Rule 3 of the Seniority Rules he was entitled for assignment of 1966 as his YOA instead of 1967. In support of his contention Sri Nagsetti strongly relies on the ruling of the Supreme Court in UNION OF INDIA v. G.N.TIWARI AND OTHERS (AIR 1986 SC 343) which affirmed the Division Bench ruling of the Madhya Pradesh High Court in K.L.JAIN v. UNION OF INDIA AND OTHERS (1984 SLR 113).

10. Sri Rao while seeking to support the impugned order on



the very reasons set out in that order and other reasons set out in the reply of respondents 1 and 3, contends, that the very claim of the applicant had been rejected by the High Court and the same cannot be re-agitated and that in any event, it was a stale claim liable for rejection on all of them. Sri Babu supported Sri Rao.

II. In the very nature of things, it is necessary to examine the two preliminary objections urged by Sri Rao first and then examine the merits, if that becomes necessary.

12. In para 7 of his order, Chadrakantaraj Urs, J. while holding that the claim of the applicant for assignment of 1966 as YOA, was a very stale claim, however, expressed thus:

"But this observation should not in any way prevent the Union of India by itself reconsidering the matter as now 13 months' service has been added to the petitioner's service in a cadre post."

In the writ Appeal, the Appellate Bench did not really approve the earlier observations of Chadrakantaraj Urs, J. and concurring with his observations extracted by us, directed the Union Government to dispose of the representations made by the applicant within the time specified in that order. In pursuance of these orders, the Union Government had made its order on 18-3-1987, against the applicant, which is now challenged by him.

13. In these proceedings, the claim of the applicant had not been rejected by the High Court but had been left to be re-examined and decided by Government, within the time specified in the order of the Appellate Bench. If that is so, then we cannot hold that the claim is barred by the principles of res judicata, as urged by Sri Rao. We see no merit in this contention of Sri Rao and we reject the same.



14. What we have so far expressed is also an answer to the contention of the respondents that the claim made by the applicant was a stale claim and should not be adjudicated by this Tribunal.

15. In compliance of the order of the High Court, the Union Government made its order on 18-3-1987 and the grievance of the applicant has really arisen from out of the said order only. When that is so, we cannot hold that the claim is a stale claim. We see no merit in this contention also and we reject the same.

16. As we have rejected the two preliminary objections urged for the respondents, we now pass on to examine the merits.

17. In their reply, the respondents do not dispute that the applicant had been officiating from 2-12-1970 to 16-9-1974 against one or the other cadre post and there was no break or disruption in the same.

18. In rejecting the claim of the applicant, Government in its order made on 18-3-1987 had stated thus:

"2. Although Shri D.Nagsetti officiate in IAS cadre post with effect from 1st July,1971 his cadre officiation has been approved under Rule 9 of the IAS cadre rules for the period upto 30-9-1971 and again from 23rd August,1972 till the date of his appointment to IAS w.e.f. 17-9-1984. As Shri Nagsetti's continuous approved officiation is from 23rd August,1972 only, he is not entitled to a year of allotment higher than 1967 in the IAS of Karnataka. His representation is, therefore, rejected. He may be informed accordingly."

In this order, the reason given is that the appointment of the applicant against a cadre post for the periods mentioned therein had not been approved under Rule 9 of the Cadre Rules and that his officiating appointment had been approved only from 23-8-1972 on which reckoning he was entitled for 1967 as his YOA under the Seniority Rules. In other words, the Union Government holds, that without



its approval of the officiating appointment against the cadre posts, his claim for allotment of 1966 as his YOA under the Seniority Rules cannot be accepted by it.

19. But, fortunately for us, the question is concluded by the Supreme Court in Tiwari's case and therefore, an independent examination of the same by us is not necessary. We now proceed to ascertain the facts and the law declared by the Supreme Court in Tiwari's case.

20. One K.L.Jain a substantive member of the Madhya Pradesh Administrative Service selected to IAS under the Regulations, was officiating against cadre posts from 10th November, 1975 to 30-9-1976 on which day he was regularly appointed to IAS. On his appointment to IAS he was assigned 1972 as his YOA under the Seniority Regulations rejecting his claim for assigning 1971 as his YOA on the basis of his officiating service against cadre posts. Aggrieved by the same, Jain approached the High Court of Madhya Pradesh in a Writ Petition under Article 226 of the Constitution.

21. On 9-9-1983 a Division Bench of the Madhya Pradesh High Court of speaking through G.P.Singh, C.J. allowed the same, rejecting in the following words the very contention urged for the respondents:

"7. A perusal of rule 9 would show that the State Government can make a temporary appointment of a non-cadre officer to a cadre post if it is satisfied that 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. In the instant case, the petitioner's appointment as a non-cadre officer to the cadre post lasted for nearly one year and one month. Such an appointment could be made by the State Government on being satisfied, there was no suitable cadre officer available for filling the vacancy. It is not stated in any of the returns that this condition was not satisfied when the petitioner was



appointed. We have, therefore, to assume that the condition was satisfied for the presumption is that everything is done in a regular manner. After a non-cadre officer is appointed to a cadre post, rule 9(2) requires the State Government to make a report of that fact to the Central Government together with the reasons for making the appointment. It appears from the documents produced at the time of hearing that such a report was made to the Central Government on 26th June, 1976. The Central Government by letter dated 19th February, 1977 asked for a consolidated proposal for approval of officiation of non-cadre officers on cadre posts for the half year ending 30th September, 1976. The State Government thereupon sent the required proposal on 29th March 1977. No other document relating to the formalities required under rule 9 was produced before us. It is neither stated in the return nor contended that the Central Government did not consult the U.P.S.C. as required under rule 9(4) or that the U.P.S.C. did not approve the petitioner's officiation. There is no communication placed before us showing disapproval of the petitioner's appointment to a cadre post from 10th November, 1975 to 30th September 1976. All that can be said is that there is no specific approval of the Central Government to the petitioner's officiation for this period. Rule 9 does not make it a condition precedent for the validity of appointment of a non-cadre officer to a cadre post by the State Government that such an appointment must be approved by the Central Government or by the U.P.S.C. in case it exceeds six months. All that is required is that the State Government has to report the appointment to the Central Government and if the Central Government directs that the appointment should be terminated, the State Government has to follow that direction. Similarly, if the appointment is likely to continue for a period exceeding six months, the Central Government has to report the fact to the U.P.S.C. to obtain the Commission's advice and the Central Government can give suitable directions to the State Government in the light of the advice given by the Commission. In the instant case, the Central Government never directed the State Government to terminate the petitioner's appointment. It is also



not the case that that the U.P.S.C. tendered any advice to the Central Government that the appointment be terminated. It is true that there is no specific approval of the Central Government to the appointment of the petitioner but that is not a condition precedent for a valid appointment under Rule 9 and the petitioner's officiation in a senior cadre post from 10th November, 1975 to 30th September, 1976 cannot be ignored on the ground that the appointment was not specifically approved by the Central Government. The petitioner's said officiation cannot also be ignored on the ground that there was no vacancy during this period in the promotion quota of the cadre officers. It is stated in the return that the promotion quota was 50 prior to 1st October, 1976 and that this was increased to 56 on 1st October, 1976. It has to be noticed that when a non-cadre officer whose name has come in the Select List is appointed to a senior cadre post, he is not appointed to the service. Rule 9 does not require that appointment of a non-cadre officer to a cadre post can be made only when there is a vacancy in the promotion quota. All that the rule says is that the State Government should be satisfied that there is no suitable cadre officer available for filling the vacancy. The petitioner's appointment to the service was made by the order dated 7th December, 1976 when there was admittedly a vacancy for him in the promotion quota of cadre officers. But, as the existence of a vacancy is not a condition precedent for making an appointment under rule 9 of a non-cadre officer to a cadre post, the petitioner's appointment from 10th November 1975 to 30th September, 1976 cannot be held to be invalid or ignored. On the same reasoning the fact that the State Government had over utilised the Deputation Reserve quota during this period can have no bearing on the question of the validity of the petitioner's appointment on the cadre post. It may be that if the Central Government thought that the State Government was wrong in over utilising the Deputation Reserve quota which gave rise to a vacancy of a cadre post, it could have directed the State Government to terminate the petitioner's appointment but such a course was never adopted. As the Central Government did not issue any direction to the State Government to terminate the peti-



petitioner's appointment, the appointment has to be held to be valid and given effect to. The petitioner's continuous officiation in a senior post from 10th November 1975 was in accordance with rule 9 of the Cadre Rules and the same enures for his benefit to give him seniority under rule 3(3)(b) of the Seniority Rules. The petitioner ought to have been assigned 1971 as the year of allotment and given seniority accordingly."

This enunciation in Jain's case was followed in similar cases of Tiwari and others.

22. Against the judgment of the Madhya Pradesh High Court in Jain's and Tiwari's cases, the Union Government filed appeals before the Supreme Court, which dismissed them approving the reasoning and conclusions of the Madhya Pradesh High Court.

23. On the very question, the Supreme Court in Tiwari's case expressed thus:

"14. Where a person other than a cadre officer is appointed to the Service by promotion in accordance with sub-r.(l) of R.8 of the Recruitment Rules, the year of allotment of the junior-most amongst the officers recruited to the Service in accordance with R.7 of the Rules who officiated continuously in a senior post from a date earlier than the commencement of such officiation by the former, is the determinative factor in allocation of the 'year of allotment' under Rule 3(3)(b) of the Seniority Rules. Proviso thereto enjoins that the year of allotment of an officer appointed to the Service in accordance with sub-r.(l) of R.8 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service in accordance with R.7 so started officiating, shall be determined ad hoc by the Central Government in consultation with the State Government concerned. Explanation 1 to R.3(3)(b) interdicts that in respect of an officer appointed to the Service by promotion in accordance with sub-r.(l) of Rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for purposes of determination



of his seniority, count only from the date of inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later. Explanation provides that an officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior post he continued to hold without any break or reversion the senior post otherwise than as a purely temporary or local arrangement. In these cases, the respondents who were appointed to the service by promotion in accordance with sub-r.(1) of R.8 of the Recruitment Rules were entitled under Explanation 1 to have the entire period of continuous officiation in a senior post, for the purpose of determination of their seniority, counted from the date of inclusion of their names in the Select List or from the date of their officiating appointment to such senior post, whichever was later. They were also entitled by reason of the legal fiction contained in Explanation 2 to have the entire period of their continuous officiation without a break in a senior post from the date of their officiating appointment to such senior post till the date of their appointment into the service, counted for purposes of determining their year of allotment under R.3(3)(b) of the Seniority Rules. It cannot be said that their officiation in senior post on the cadre for the periods in question was merely fortuitous or stop-gap.

15. We are not impressed with the submission that the power of the Central Government under sub-r.(2) to direct termination of appointment of a person other than a cadre officer to a cadre post for a period exceeding three months or more was a larger power and carried with it the power to direct curtailment of the period of officiation of such person. Obviously, the power to direct termination of the appointment of a non-cadre officer in a senior post is distinct from the power to direct curtailment of his period of officiation. There is no such provision made in the Cadre Rules empowering the Central Government to direct the curtailment of the period of officiation of a non-cadre officer on a cadre post for purposes of reckoning his year of allotment under R.3(3)(b) of



of the Seniority Rules. Such a power cannot be spelled out from sub-r.(2) of R.9 of the Cadre Rules which confers power on the Central Government to direct termination of appointment of a non-cadre officer to a cadre post. In the absence of such a provision, the impugned order passed by the Central Government appointing October 1,1976 as the date from which the period of officiation is to be reckoned for determining the year of allotment under R.3(3)(b) of the Seniority Rules was wholly arbitrary and capricious and therefore rightly struck down by the High Court. The failure of the Central Government to give a direction under sub-r.(3) of R.9 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 in view of the fact that the Central Government by letter dated February 19, 1977 required the State Government to submit a consolidated proposal for approval of officiation of non-cadre officers on cadre posts for the half year ending September 30,1976. This was followed by a report of the State Government dated March 29,1977. The Central Government by order dated October 1,1976 accorded its approval to their appointment in the Indian Administrative Service. Furthermore, the respondents as non-cadre officers could not be denied the benefit of continuous officiation in a senior post merely because the State Deputation Reserve Quota was over utilised: *Harjeet Singh v. Union of India* (1980) 3 SCR 459: (AIR 1980 SC 1275) and *Amrik Singh v. Union of India*,(1980)3 SCR 435:(AIR 1980 SC 1447)".

In this enunciation, the Court had disapproved the very reason or ground on which Government in its order made on 10-3-1987 had rejected the claim of the applicant. On this ratio, the question of approval by the Union Government for officiating appointments against cadre posts does not arise and that such service, when it is continuous as in the present case, was bound to be reckoned in assigning the YOA under the Seniority Regulations.

24. In the writ proceedings before the High Court, the respondents had admitted, that if continuous officiation of the applicant



from 2-12-1970 to 16-9-1974 was reckoned, then his claim for 1966 as his YOA instead of 1967 was unexceptionable. In this application the respondents do not dispute the same. In this view, there is hardly any ground for us to unnecessarily direct the Union Government to re-examine and decide the matter. We, therefore, hold that the claim of applicant for assignment of 1966 as his YOA instead of 1967 calls for our acceptance.

25. On the basis of his claim for assignment of 1966 as his YOA, the applicant has also claimed for promotion to the Selection Grade and Super Time Scale of IAS from the dates his immediate juniors were promoted to those cadres. Sri Nagetti argues for the grant of these reliefs also.

26. Learned counsel for the respondents contend that promotions to Selection Grade and Super Time Scale had to be considered by the State Government and appropriate orders made in accordance with law.

27. The fact that the applicant sets an earlier year as his YOA does not by itself entitle him to claim for promotions to Selection Grade and Super Time Scale of IAS.

28. Whether any of his immediate juniors were promoted to those cadres and if so, from what dates and then whether he was suitable for promotion or not, have all to be examined and decided by State Government in the first instance, in accordance with law. We, therefore, consider it proper to issue appropriate directions in that behalf.

29. In the light of our above discussion, we make the following orders and directions:



(a) We quash Order No.14014/83-AIS(I) dated 18-3-1987 (Annexure-A10) issued by Government of India.

(b) We declare, that the applicant was entitled for assignment of 1966 as his year of allotment, under the Seniority Regulations.

(c) We direct respondent-2 - Government of Karnataka, to reckon the year of allotment of the applicant as 1966 instead of 1967 under the Seniority Regulations and regulate all his further promotions and conditions of service on that basis, till he retired from service and extend to him all such consequential benefits including monetary benefits, to which he is entitled, including revision of pension that may become necessary with all such expedition as is possible in the circumstances of the case and in any event, within a period of 3 months from the date of receipt of this order.

30. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.



Sd/-
VICE-CHALMAN

9-10-1987

Sd/-
MEMBER(A)
9-10-1987

- True copy -

R. V. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
29/10/87

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 30 AUG 1988

INTEMPT PETITION APPLICATION NO. 61 / 88
(CIVIL) IN APPLICATION NO. 453/87(F)
W.P. NO. /

Applicant(s)

Shri D. Nagsetti

v/s

To

Respondent(s)

The Secretary, M/o Personnel, Public
Grievances & Pension, New Delhi & another

1. Shri D. Nagsetti
423, Upper Palace Orchards
Bangalore - 560 080
2. The Secretary
Ministry of Personnel, Public Grievances & Pension
Department of Personnel & Training
New Delhi
3. The Chief Secretary
Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001
4. Shri S.V. Narasimhan
State Govt. Advocate
Office of the Advocate General (KAT Unit)
BDA Commercial Complex
Indiranagar
Bangalore - 560 038
5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~INTERIM ORDER~~
passed by this Tribunal in the above said C.P. (Civil) application(s) on 19-8-88.

Encl : As above

R. I. Iyer
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated, the 19th day of August, 1988.

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY VICE CHAIRMAN
THE HON'BLE MR. P. SRINIVASAN .. MEMBER(A)

CONTEMPT PETITION NO.61 OF 1988
in
APPLICATION NO. 453 OF 1987.

D.Nagsetti S/o Siddlingappa,
64 years, Retd.Govt.Servant
No.423, Upper Palace Orchards,
Bangalore-560 080. .. Petitioner.

(Applicant in person)

-vs.-

1. The State of Karnataka (since deleted vide order
dated 20-7-1988).

The Union of India by its
Secretary, Ministry of
Personnel, Public Grievances
and Pensions,
New Delhi.

Substituted
vide order
dt. 20-7-1988.

2. Sri A.B.Datar, I.A.S.,
Chief Secretary to
State of Karnataka,
Vidhana Soudha,
Bangalore-560 001.

.. Respondents.

(Sri M.Vasudev Rao, Addl.Standing Counsel for Central
Government, for R-1; Shri S.V.Narasimhan, Government
Advocate for R-2).



This

This petition coming on for hearing this day, the HON'BLE VICE CHAIRMAN made the following:

ORDER

Learned Counsel for the respondents report that the Order dated 9-10-1987 in Application No.453 of 1987 made by this Tribunal had been complied with by them, in letter and spirit. Shri Nagsetti, who is the petitioner herein, does not rightly dispute this fact. In this view, these contempt proceedings are liable to be dropped.

2. We, therefore, drop these contempt proceedings. But, in the circumstances of the case, we direct the parties to bear their own costs.



Sd/-
(K.S.PUTTASWAMY)
VICE CHAIRMAN.

Sd/-
(P.SRINIVASAN)
MEMBER(A).

Parivartan
DEPUTY REGISTRAR (JDL) *80/80*
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE