

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 47/91

Transfer Application No. ---

Date of Decision : 16-2-1995

Shri Damodar Ramachandra Janu

Petitioner

Applicant in person

Advocate for the
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr.V.S.Masurkar counsel for R.Nos.1 & 3

Mr.G.K.Nilkanth counsel for R.Nos.2

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman

The Hon'ble Shri M.R.Kolhatkar, Member(A)

- (1) To be referred to the Reporter or not ? Yes.
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No.


(M.S.DESHPANDE)
VC

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(23)

O.A. 47/91

Shri Damodar Ramachandra Janu .. Applicant

-versus-

1. The Union of India
through
The Secretary,
Ministry of Home Affairs,
New Delhi.

2. The State of Maharashtra
through
Chief Secretary,
Govt. of Maharashtra,
Mantralaya,
Bombay.

3. The Union Public Service
Commission,
Dholpur House,
New Delhi.

.. Respondents

Coram: Hon'ble Shri Justice M.S. Deshpande
Vice-Chairman

Hon'ble Shri M.R. Kolhatkar,
Member(A)

Appearances:

1. Applicant in
person.

2. Mr. V.S. Masurkar
Counsel for
Respondents No. 1 & 3.

3. Mr. G.K. Nilkanth
Counsel for
Respondent No. 2.

ORAL JUDGMENT: Date: 16-2-1995
Per M.S. Deshpande, Vice-Chairman

By this petition the applicant
prays for deciding the rank in the Gradation
list of Deputy Collectors in the year 1964
vide M.G. Nayak and for assessment of the
merit for his promotion as in the case of
Deputy Collectors of 1964 from 1978 onwards;
for
for assessing his fitness/including in the
select list of 1978 or the date on which he
had a right to be considered under the fourth
proviso to regulation 5(2) and for a direction
to respondents No. 1 & 2 to appoint him with

retrospective effect from the date on which he was due for promotion together with all consequential benefits including emoluments such as salary and deemed date of promotion.

2. The applicant had joined defence training service on 14-10-1963 and after completion of his training and after serving in the defence service, he was released on 1-8-1969 from defence service. He had appeared for the competitive examination held by the Maharashtra Public Service Commission in June-July 1969 for appointment in the post of Deputy Collector reserved for the Emergency Commissioned Officers and was selected at the first attempt for appointment in the said post and since then he was serving as Deputy Collector from 11-8-1970. He had spent 5 years 9 months 18 days including the period of training in the defence service and this period was to be counted for the purpose of fixation of pay and seniority as per rules, in view of the Govt. notification General Administration Dept. No. RTA-1083/2264/CN 77/16-A dated 29-9-1988 by an amendment of the Maharashtra Released Defence Services Personnel (Fixation of Pay and Seniority) Rules, 1974. The proviso which was inserted provided ⁱⁿ the case of Emergency Commissioned Offices, who were overage at the time of joining defence services for appointment in the Govt. service their length of service in the defence service (including training) should be counted for the purpose of fixation of pay and seniority. For the purpose of fixation of pay in the grade of Deputy collector the date 24-10-1964 was given and as per rule 6 of the Maharashtra Released Defence Services Personnel (Fixation of pay and

25

Seniority) Rules, 1974 he was allotted seniority below all the officers appointed by nomination against the unreserved vacancy of the year in which he was getting his seniority. He came to be placed in the seniority list published on 20-8-77 below Shri J.L.Pimple (Sr.No.143) and above Shri S.V.Jadhav (Sr.No.144). The applicant's contention is that this placement was not correct in view of the Govt. of Maharashtra Resolution No.RTA-1162-V dated 2nd May 1963 because he should have been placed after the 50% of the unreserved vacancies of direct recruits and if that posting would have been done his name would have appeared below M.G.Nayak who was at Sr.No.35 and not below J.L.Pimple who was at Sr. No.50 in the seniority list that was prepared on 22-3-1977.

3. The applicant raised objections to his placement in the seniority list dt. 20-8-1977 but that representation was rejected. He therefore filed Civil Application No.2697 of 1977 in the High Court of Judicature at Bombay on 10-10-1977 against the order of rejection but that was dismissed in view of the rules of 1974. The applicant approached Supreme Court by SLP No.4003 of 1981 and Civil Appeal No. 3368 of 1981 but the Supreme Court rejected both these on 7-12-90. Thereafter the Govt. of Maharashtra promulgated amendment rules 1978, 1982, 1983 and Amendment Rules 1988 of the Maharashtra Released Defence Services Personnel (Fixation of Pay and Seniority) Rules, 1974.

Under the proviso to clause(b) of Rule 3, of the amended rules of 1988 weightage was allowed to an Emergency Commissioned Officer who was overage equal to his total defence service for the purpose of fixation of pay and seniority. The applicant moved the Govt. of Maharashtra, respondent No.2, to determine the seniority under the Rules of 1974 as amended by amendment rules 1988 by filing an application on 10-10-1988. As referred to above the applicant was given a placement below J.L.Pimple. His contention is that he should have been given a placement below M.G.Nayak and all the benefits which would flow from such a position.

4. The contention of the respondents is that since the applicant's earlier petition was dismissed by High Court and that dismissal was affirmed by Supreme Court, the applicant would not be entitled to re-agitate the matter again. This contention does not impress us because what the applicant is claiming now is the benefit of amendment which was brought about in 1988 which gave him certain advantages and that amendment could not have come up for consideration either before the High Court or before the Supreme Court and the cause of action for the grievance which the applicant is now making arose after the decision in the previous writ petition.

5. The case of the applicant will have to be considered in the light of "The Indian Administrative Service(Appointment by Promotion)

(2)

Regulations, 1955. Regulation 5 deals with the preparation of a list of suitable officers from the State Civil Service and requires the selection committee to meet at intervals not exceeding one year and prepare a list of such members as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the date of preparation of the list, Sub-Rule (2) requires the committee to consider for inclusion in the said list, the cases of members of the State Civil Services in the order of ^{their} seniority in that service of a number which is equal to three times, the number referred to in sub-regulation (1) subject to four provisos. The fourth proviso requires that the member of the service should have completed eight years of continuous service (whether officiating or in continuous appointment in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.) The fourth proviso which was inserted by the notification dated 1-6-78 provides as below:

"Provided also that in respect of any released Emergency Commissioned or Short service commissioned officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual

continuous service, on the first day of the January of the year in which the committee meets, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government. "

6. When the matter was taken up by the applicant ^{filing a} writ petition to the High Court he was governed by ~~the~~ Rules for fixation of pay and seniority promulgated on 16-11-1974. Rule 2(c) defines "reserved posts" and it means fifty per cent of the permanent posts reserved by the Government of Maharashtra for being filled in by the Government from the released defence service personnel. The unamended Rule 3 referred to two categories (a) and (b) depending on whether the Emergency Commissioned Officer was selected at the first attempt or on the second or third attempt respectively. Rule 6 provides that "All Emergency Commissioned Officers belonging to a particular year shall rank below all candidates appointed to unreserved posts by nomination in that year. Rule (7) provides that "The specific date on which an Emergency Commissioned Officer shall be deemed to have been appointed to the reserved posts shall be decided by the state government." Rule (8) provides that "The seniority of Emergency Commissioned Officers who would not have been eligible to compete for the reserved vacancies without availing themselves of the concession in age or educational qualifications admissible to them shall be fixed from the date of their actual appointment." The Govt. of Maharashtra vide order dated 21-11-1990 dealt with the case of

29

applicant and purported to comply with the requirements of above rules. Under the Govt. of Maharashtra Resolution dated 2-5-1963 (Annexure-C) which dealt with the reservation of vacancies the following provision is made:

"(i) Reservation of vacancies:

Fifty per cent of all substantive vacancies in posts in all cadres occurring on or after the 26th October, 1962 which have been filled in by direct recruitment or are required under the recruitment rules for those posts to be filled in by direct recruitment should be reserved for being filled in permanently at the termination of the national emergency by the appointment of candidates rendering defence service. These vacancies should, therefore, be filled in only temporarily for the duration of the emergency till they are filled in by the appointment of candidates who have rendered defence service.

The remaining 50% of such vacancies should be treated as 'unreserved' and should also be filled in for the duration of the emergency temporarily. On the termination of the emergency, these vacancies will be filled in permanently by selection from among -

- (a) candidates who are appointed to them temporarily, and
- (b) candidates who have rendered defence service."

This rule therefore would show that the released defence personnel should have been given placement after the vacancies 50% of the un reserved vacancies filled by nomination.

The seniority list dt. 22-3-77 shows that during year 1964 there were 59 vacancies. Para 8 thereof shows that 30 vacancies were filled by

20

direct recruits and 29 by promotees, ~~the~~ the availability of direct recruits being 30.

The officers of the year 1964 are mentioned at Appendix 'B' page-56, beginning from Sr.No.21 Shri B.R.Sawant, at Sr.No.35 Shri M.G.Nayak and Shri J.L.Pimple at Sr.No.50. If one ^{were to} go by ~~this rule~~ the name of the applicant should have appeared after Shri M.G.Nayak and above Shri J.G.Deshpande. Rule-6 of the Maharashtra Released Defence Services Personnel (Fixation of Pay and Seniority) Rules, 1974 have to be read with Govt. of Maharashtra resolution dt. 2-5-1963 which we have quoted above and the order dated 21-11-90 by which the applicant was placed below J.L.Pimple was entirely contrary to the rules and on the basis of the seniority list the applicant should have been ^{placement} given after Shri M.G.Nayak. It is not under Rule 6 that a deemed date has to be given but it is under Rule 7 of the Rules dated 16-11-74. Although there is a reference to Rule 6 while assigning the date 24-10-64 to the applicant, this must be deemed to have been ^{the} ~~an~~ action taken pursuant to the enabling provisions of Rule 7 of the Maharashtra Released Defence Services Personnel (Fixation of Pay and Seniority) Rules, 1974. This would be in consonance with the amendment dated 29-9-1988 to Maharashtra Released Defence Services Personnel (Fixation of Pay and Seniority) Rules, 1974 by which in Rule 3 thereof, in sub-rule (1) after clause (b) the following proviso came to be inserted:

"Provided that an Emergency Commissioned Officer who is overage with reference

31

to the provisions of clause(a)above, shall be allowed weightage equal to his total defence service for the purposes of fixation of his pay and seniority. In such case the seniority of an Emergency Commissioned Officer shall also be decided in accordance with the provisions of rule 7."

As we have pointed out above after giving the deemed date for the purpose of fixation of pay in the grade of Deputy Collector viz.24-10-64 the ranking to the applicant by order dated 21-11-90 should have been after Shri M.G.Nayak, Sr.No.35 of the seniority list and to this extent the benefit was denied to the applicant and the circular to that extent ~~shall have to be~~ quashed and the seniority in accordance with the rule shall be deemed to have ^{been} assigned to the applicant after Sr.No.35 M.G.Nayak.

7. The next contention on behalf of the respondents was that since the applicant is challenging the placement in the seniority list dt. 22-3-77 in the cadre of Deputy Collectors he should have moved the Maharashtra Administrative Tribunal ^(M.A.T.) and not the Central Administrative Tribunal ^(C.A.T.) for the relief. It is difficult to accept this proposition because ultimately the jurisdiction of the Tribunal would depend upon the averments made in the main petition and the relief that ^{is} ultimately sought. Having regard to the fact that the applicant is contending before us that he should have been considered for promotion to IAS on the basis of the gradation list of Deputy Collectors and he is ranking below M.G.Nayak and for consideration by the

32

selection committee on that basis for being appointed to the IAS, the C.A.T. u/s. 14 of the A.T. Act, 1985 would have the jurisdiction. The language of Section 14 is very wide and takes in all the matters in relation to -

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a Civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian

(b) all service matters concerning -

(i) a member of any All India Service...."

The applicant admittedly was inducted in the year 1993 vide order dated 23-4-1993 which has been produced before us. This Tribunal therefore will be the only forum which would have the jurisdiction to grant the relief of the nature sought by the applicant and once it is held to have the jurisdiction to entertain the matter it would be bound to consider an issue ancillary to the granting of that relief. We, therefore, see no merit in the contention that the applicant should have approached M.A.T. because that Tribunal would not have the jurisdiction to grant the relief which is being claimed by the applicant. Apart from this, the subsequent orders on the basis of which the present application was filed by the applicant and the reliefs were sought relate to recruitment to the IAS and this position would conclude that this Tribunal alone has the jurisdiction to entertain the application.

8. Learned counsel for the respondents urged that the applicant would not be entitled to a promotion which he can get only by the reversion of those who were already appointed. Learned counsel for the respondents referred to the non abstante clauses 3A and 8A which have been inserted in the Maharashtra Released Defence Service Personnel (Fixation of Pay and Seniority) Rules, 1974. They read :

"3A. Notwithstanding anything contained in Rule 3, no Emergency Commissioned Officer shall be promoted by reverting to a lower post any other officer who was senior to him immediately before the commencement of the Maharashtra Released Defence Services Personnel (Fixation of Pay and Seniority) (Amendment) Rules, 1983."

8A. Notwithstanding anything contained in rule 8, no Emergency Commissioned Officer, shall be promoted by reverting to a lower post any other officer who was senior to him immediately before the commencement of the Maharashtra Released Defence Services Personnel (Fixation of Pay and Seniority) (Amendment) Rules, 1983."

As we have pointed out ~~xxxx~~ clause (a) & (b) of Rule 3 of the parent rules of 1974 dealt with the position regarding the attempts after which the Emergency Commissioned Officer was selected to the post. Though certain amendment is sought to be made also to Rule 3 by substituting the figure (1) before the clauses (a) & (b) and certain words viz. the words being eligible for that post after the words "year in which" in clause (a), those amendments would not material to the issue with which we are concerned. The non abstante

clause 3A which has been added refers only to the contingencies arising from Rule 3, whether unamended or amended, and has no bearing on the result which will follow on account of application of rules 6 and 7. The non abstante clause which follows Rule 8 could be effective only regarding the situation obtaining prior to the insertion of clause 8A and not to the posts to be filled by the Released Defence Services Personnel upon being selected after the amendment, though it may incidentally have the effect of giving them a placement over the others who had been selected after the amendment. This however is ^{the} a position which shall have to be taken into account by the authorities concerned if the applicant is found entitled to be selected. Though the applicant urged before us that in view of the seniority we may grant to him we also should grant him all the reliefs which he has prayed, it is obvious that it is not possible to do so. The applicant has also agitated before us that his case came to be considered by taking into account certain adverse remarks for the year 1986-88, though he had made representations against these remarks. Those representations came to be rejected but by the decision of M.A.T. Bombay Bench in O.A.1038/91 the adverse remarks passed against him for the period 1-4-1984 to 31-3-1985 were quashed and set aside and were expunged. This however not the relief which could have been sought before us but since the applicant had already moved the M.A.T. and obtained some relief in the matter, it would be for the authorities to consider only such annual confidential reports which could be

35

considered in the light of the representations which the applicant had made and the decisions taken thereon as well as the decision of the M.A.T. That is a matter ~~on~~ which we do not wish to express any opinion at this stage since that would be a matter for the ^{Selection} Committee to determine.


9. Respondent No.2 pointed out in their reply that the applicant was considered for promotion to the I.A.S. in the years 1981 and 1982 as he was eligible and had been within the zone of consideration. He, however, did not acquire the required grading and consequently could not find ^a place ~~in~~ the select list. In 1983 and 1984 the applicant could not be considered for promotion to the I.A.S. as he did not come within the zone of consideration. In the years 1985 and 1986 the name of the applicant was considered by the Selection Committee but they did not find him suitable. In 1987 the applicant did not come within the zone of consideration and in 1988 he was considered but he ~~xxx~~ could not make the required grading and therefore he could not enter ~~xxx~~ the select list. The applicant was considered on 11-3-1991 by the Selection Committee and the learned counsel for the respondents informs ^{us} that he could not make the necessary grade in 1991.

10. In view of the placement ~~which~~ the applicant ~~now~~ gets ~~xxxxxxx~~ in view of ~~the~~ what we have said above, upon the

36

interpretation of the rules, the applicant would be entitled to be considered on the basis of whatever material was available in respect of each particular year from 1978 to 1984 and 1987. No question arises in respect of years 1989 and 1990 as the selection committee meeting was not held in these years to consider the promotions. While considering the applicant's promotion in the earlier years the committee shall have to consider the record of the applicant relevant to those years only and shall not take into account the material regarding later years for promotion in the earlier years as laid down by the Supreme Court in the case of Central Board of Direct Taxes and another vs. O.N.Tripathi(Dr.) and others, 1991 SCC(L&S) 736.

11. We, therefore, direct the respondents to consider the applicant's claim on the basis that he figures ~~at~~ below M.G.Nayak(Sr.No.35) in the seniority list of 22-3-77 and by holding a review selection committee consider his suitability for selection in the years 1978 to 1984 and 1987 and if the applicant is found suitable grant him all the benefits including pay and allowances as well as deemed promotions based on his suitability as determined in any particular year. This shall be done within six months from the date of communication of this order. No order as to costs.


(M.R.KOLHATKAR)
Member(A)


(M.S.DESHPANDE)
Vice-Chairman

(37)

CP No 44/96
Hend 2nd
on 27/7/96.
3/28/4

12) 27.05.1996.

Applicant in person.
Issue notice to the
respondents on C.P. No.
44/96.

List the case on
19/7/1996
(P.P. Srivastava) M(A)
(B.S. Hegde) M(J)

OS

Notices issued to
Applicant/Respondents on
4/6/96
6/6/96

Per Tribunal Date: 19/7/96
Applicant in person by
Advocate / Respondent by Mr. F.N. Karthi
Counsel for writ of habeas corpus
The matter adjourned to 30/9/96
for orders in CP 44/96
Dy. Registrar

Reply of R.No. 2
on to C.P. recd.
on 19.7.96.
24/7

Reply of R.No. 3 to
C.P. recd. on 19.7.96.
21/8/96
Dated: 30.9.96 (26)
Applicant in person.
Ms. Shenoy for Shri V.S. Masurkar,
Counsel for respondent No 1 and 2.
Shri S.S. Karkera Counsel for respondent
No 3.
Pleadings are complete.
Shri Masurkar is reported to be
unwell and seeks for an adjournment
Adjourned to 6.12.96.
M.R. Kolhatkar
(M.R. Kolhatkar) M(A)
(B.S. Hegde) M(J)

Per Tribunal

Date: 13/12

As there will be no Division Bench, the matter fixed on 6/12/96 before the Tribunal is adjourned for Admission hearing / directions / orders / final hearing on 13/12/96

Inform the advocates / Parties accordingly.

Dy. Registrar

26) 13.12.1996.

Heard the applicant in person.

Shri V.S. Masunkar for Respondent No. 1 & 2.

Shri S.S. Karkera for Respondent No. 3.

Applicant has filed C.P. No. 44/96 in the month of April 1996 stating that the Respondents have not complied with the directions of this Tribunal vide dated 16-2-1995.

The Respondents have given reasonable explanation for delay in convening the review D.P.C. as per the direction of the Tribunal.

We are satisfied with the explanation given by the respondents.

In the circumstances ~~we do not find any~~ we find that the applicant has not made out any contempt against the respondents.

The respondents are directed to convey the final decision of the review DPC to the applicant within a period of two weeks from today.

order/Judgment despatched to respondent(s) on 31/12/96

Yash
11/1/97

Accordingly, the C.P. No. 44/96 is discharged.

(P.P. Shrivastava)
M(A)

(B.S. Hegde)
M(J)