

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.1096/95

Dated this Wednesday the 3rd Day of April, 2002.

Coram : Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Laxman Waman Chaudhari,
I.A.S. (Retired) presently,
residing at 13/A12,
Government Officers Quarters,
Haji Ali, Bombay-400034.

.. Applicant.

(By Advocate Shri G.K. Masand with
Ms.S.A. Sawant)

Versus

1. State of Maharashtra, through
Chief Secretary, General
Administration Department,
Mantralaya, Bombay-400032.
2. Additional Chief Secretary,
Revenue and Forest Department,
Government of Maharashtra,
Mantralaya, Bombay-400032.
3. Union of India, through the
Secretary in the Ministry of
Personnel, Pension and Public
Grievances, South Block,
New Delhi.

.. Respondents.

(Respondent Nos.1 and 2 by Shri V.S.
Masurkar, Advocate and Respondent No.3 by
Shri R.K. Shetty, Advocate)

ORDER

{ Per : B.N. Bahadur, Member (A) }

The applicant in this case is aggrieved on account of denial to him of the opportunity to get into Indian Administrative Service (IAS) at the correct time on the basis of seniority and outstanding record. He seeks the relief by way of direction to Respondents to

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review the select list of Officers considered for promotion to IAS from the year 1977 onwards. It is alleged by him at the beginning of the O.A. that Respondent Nos.1 and 2 failed to finalise the seniority of the applicant in the cadre of Deputy Collectors in Maharashtra Civil Service upto 1991, when the Judgment of the Bombay High Court in applicant's case (Writ Petition No.4548 of 1983) was delivered. The case has been argued on both the sides viz. by Learned Counsels Shri G.K. Masand with Ms.S.A. Gode for the applicant and by Shri V.S. Masurkar for Respondent Nos.1 and 2 and by Shri R.K. Shetty, for Respondent No.3.

2. The basic facts as put forth by the applicant are that the applicant was appointed as direct recruit Mamlatdar on 2.11.1959 on being selected through Public Service Commission, and was promoted as Deputy Collector by order dated 7.6.1967. The rules of recruitment/appointment to Deputy Collectors post then described, to the effect that 50% of Deputy Collectors post were filled in by promotion through Mamlatdar/Tahsildar and 50% by direct recruitment. Various seniority lists were prepared by Respondent No.1 and since the applicant and some others were adversely affected in the seniority list, the applicant approached the High Court, alongwith others, for directions to the State Government to publish a fresh seniority list of

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Tahsildars from 1956 to 1968 and publish a fresh seniority list of Deputy Collectors from 1.5.1960 to 31.12.1975, and beyond. The aforesaid Writ Petition was decided by the Hon'ble High Court on 6.2.1989 and directions were issued, which are reproduced on page 5 of the O.A. The amendments made (on speaking to the minutes) by Hon'ble High Court have been described. The applicant states that the State of Maharashtra had filed a S.L.P. in the matter before the Hon'ble Supreme Court which was rejected. Although 4 months were granted by the High Court to the State Government for preparing fresh gradation list, the Respondent No.2 took 2 years to prepare the list which was issued vide G.R. dated 6.2.1991. In this gradation list, the applicant's original date of seniority was restored as 13.6.1967 (in the post of Deputy Collector). The applicant in this context takes certain grounds and contentions in his O.A. which were argued, inter-alia by his Learned Counsel and which will be taken up ahead. These have been made in considerable detail in the O.A. and well they are not being reproduced in similar detail these have been carefully seen.

3. Respondent Nos.1 and 2 i.e. the State of Maharashtra have filed a reply. A separate reply has been filed by the Union of India viz. Respondent No.3. In their reply to the O.A., the Respondent Nos.1 and 2, well

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resisted the claims of the applicant. They have ~~have~~ made the following points which are reproduced in gist (a) the application suffers of delay and laches and deserves to be dismissed on this ground. A number of judgments have been cited in support of this contention. (b) The seniority list of Deputy Collector was drawn up from 1.11.1956 to 31.12.1979 by allocating yearwise vacancies between direct and promotee Deputy Collectors in the ratio of 1:1. In that process promotee Deputy Collectors, who were found working in vacancies in excess of the quota prescribed for them in recruitment rules, were pushed down to subsequent years in the seniority list. Thus the grievance occurred to some who filed Writ Petition No.4548/83. (c) Details of the Order of Hon'ble High Court are given and it is stated that modified seniority list of Deputy Collectors was issued after inviting objections. After a meeting of representatives of Deputy Collectors, final seniority list was published on 13.2.1991 (Exhibit R-1). (d) Applicant was promoted to IAS vide notification dated 27.8.1992 (page 47 of the paper book). He has ^{been} allotted 1984 as year of allotment, taking into consideration his date of appointment as Deputy Collector i.e. 13.6.1967 as per revised seniority list of Deputy Collectors. Hence, the question of reviewing the select lists prepared does not arise. The point regarding pay fixation have been replied to in the written statement, but these are not being recalled here

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because the applicant has stated in writing and through Learned Counsel that he is now pressing only for sub-para 6 of sub-para 8 of relief sought.

4. The reply on behalf of Respondent No.3 has also been seen. The point made therein are being set out below in gist only to the extent relevant to Para 8(c) of O.A. Respondent No.3 has first stated that they rely upon the written statement being filed by Respondent Nos.1 and 2. Regulation 5(2) of IAS (Appointment by promotion) Regulation 1955 is then recalled and its contents set forth. The Respondents aver that Applicant was not within the zone of consideration till 1992 when he was considered for a promotion to the IAS. A stand therefore taken that no injustice is caused to the applicant.

5. Learned Counsel for the applicant Shri G.K. Masand in the beginning reiterated what has been stated in M.P.855/2000 that the applicant is pursuing only sub para (c) of the relief i.e. for a plea of review to select list of officers considered for promotion to IAS from 1977 onwards.....At the outset the Learned Counsel took us over the judgment of the Hon'ble High Court of 6.2.1989 in some detail and the 2nd order dated 13.2.1989 where the Hon'ble High Court had modified para 6 of its Judgment. It was argued by Learned Counsel that petition

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had succeeded, and the gradation list had been struck down. He directed the preparation of fresh gradation list taking into account the seniority of the promotee Deputy Collectors on the basis of date of continuous officiation and date of actual joining in respect of direct recruits. Learned Counsel for the applicant specially drew our attention to that part of the judgment where it was directed that irrespective of the fact as to when the fresh gradation list is prepared, the Deputy Collectors in the list would be entitled to all benefits of service in accordance with the seniority which will be determined in the gradation list. That the High Court's Judgment had attained finality was stressed by Learned Counsel by reiterating that a review petition filed by the Government before the Hon'ble High Court had both been rejected by it.

6.. Learned Counsel for the applicant then took us over the contents of Para 8,9, 10 of the O.A. which laid down the aforesaid direction of the Hon'ble High Court and recounted the action taken, after 2 years, in issuing of revised seniority list of Deputy Collectors on 6.2.1991. The applicant has stated that he has been shown as appointed on promotion as Deputy Collector on 13.6.1967 and hence became eligible for consideration to IAS after the stipulated 8 years in 1977. Learned Counsel then stressed that in any case even if there were

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no vacancy after 8 years it would be important to see that when the junior became entitled, and it was the contention of the Learned Counsel that the junior to the applicant was promoted in 1986. It was further argued that the applicant had throughout been agitating the matter and was not guilty of delay and laches, and despite his various attempts at pursuing the matter with the State Government no reply was forth coming.

7. Learned Counsel Shri Shetty argued the case for the Union of India and stated that the Tribunal lacks jurisdiction as the relief sought related to 1977 and that the O.A. was hit by the law of limitation. He cited the set of cases in support of Union of India's stand.

- (i) B.S. Bajwa & Anr. V/s. State of Punjab & Ors. SCSLJ 1998 (1) 168.
- (ii) V.K. Mehra Vs. The Secretary, Ministry of Information & Broadcasting, ATR 1986(1) CAT 203.
- (iii) B.V. Sivaiah Vs. Addanki Babu, 1998 SCC(L&S) 1659

8. Learned Counsel Shri Masurkar who argued the case for Respondent Nos.1 and 2 first made the point regarding delay and laches, stating that no communication has been

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challenged and in a case mandamus is asked for which is to be noted that applicant comes up to the Tribunal after his retirement and even after he is chosen for IAS. He would be hit by the Section 21 of the Administrative Tribunal's Act. Further, the O.A. suffers from non joinder of necessary parties.

9. Arguing the case on merits, Learned Counsel sought to depend on his written statement. He referred to Para 9 (page 123). In regard to the point made about the rights of the applicant vis-a-vis promotion of juniors as made out during the arguments. The Learned Counsel for respondents stated that such a right should have been argued in the O.A. by complete pleadings. He stated that it should have been clearly stated as to who the junior of the applicant was vis-a-vis whom the rights of the applicant were affected. It was argued that there were no pleadings in this regard.

10. As stated above, we are discussing the claim in this O.A. with reference only to para 8(c) of the O.A., in which the applicant has sought for a direction to the respondents to review the select list of officers considered for promotion from 1977 onwards for the purpose of considering applicant's own claim of promotion to IAS from 1977 onwards. The papers in the O.A. have

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been seen and the argument taken by Learned Counsels on both sides has been carefully considered. We have also been provided by the respondents with copies of some record relating to selection for the year 1977 to 1992 and these have been gone into wherever found relevant and necessary.

11. In view of the restriction to one specified relief, the point becomes somewhat straight forward and in a shorter focus in the context of the rules of selection to IAS by promotion from Deputy Collectors cadre. It is a fact that firstly the directions of the Hon'ble High Court have been followed by the respondents and the select list has been issued. Copies of exhibits are available at Exhibit R-2 page 129 where it is stated that the list is being formulated in view of the directions contained in the orders on Writ Petition No.4548/83. The applicant has admittedly given the date of apointment of 13.6.1967 and on this score now in the first instance the rules stipulated that eligibility of promotion of Deputy Collectors comes after a service of 8 years of continuous officiation. The applicant computes his eligibility therefore from the year 1976-77. It must be stated straight way that eligibility for consideration cannot come automatically in view of the satisfication of

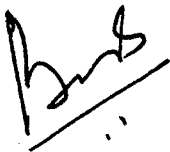
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the minimum number of years of service. It is a well known ~~in~~ that in any cadre not excluding the cadre of Deputy Collectors the consideration comes on the basis of vacancies, seniority, of promotion and other requirements of Recruitment Rules. The acid test would be if any junior has been considered earlier.

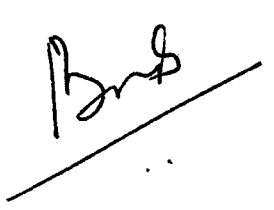
12. It is unfortunate, and indeed this point was made by Learned Counsel Shri Masurkar that the applicant has not made any specific claim in this regard by quoting the name of junior specifically. However, in the interest of justice, we have gone into this point and had with the help of Learned Counsels on both sides tried to assess as far as the availability of record allows ^{as} us ^{to} whether there has been any patent irregularity in not considering the applicant in 1977 or even in following years. We tried to look at the papers on record, specially the aforesaid notification dated 15.2.1991. Our attention has also been drawn to the notification dated 22.10.1996 available at Ex.R-2 {Page 183 (A)}. Even though this (latter) order relates to junior administrative grade, we have tried to assess the names of some of the people. At the time of argument it was stated by Learned Counsel for applicant that his junior was promoted in 1986. No name was indicated which is in fact was incumbent upon an applicant who alleges lack of proper consideration. We have tried to see the O.A. Several contentions have been

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taken but were not able to find any name. There is only a vague assertion that the junior was promoted in 1986. We find from the seniority list of 15.2.1991 that the person shown below Shri L.W. Chaudhuri is one Shri B.B. Rane followed by number of other promoted officers including one Shri M.N. Patel whose name incidently appears just below Shri L.W. Chaudhuri in Exh.R-2 and who has been given the same appointment of junior administrative grade. In the first place even though it is clear legal necessity on the part of applicant to stake claims with proper reference to juniors, this has not been done. We have tried to co-relate the matter with reference to seniority list of 1991 on record and set of papers provided (Supra) by respondents during the arguments. We find that the name of the applicant amongst the candidates whose names were sent for consideration to selection committee meeting on 6.12.1991, Shri Patel's name followed Shri Chaudhuri's name. We are not able to see that any junior has been wrongly considered for appointment to IAS before the applicant from whatever assessment could be made with regard to papers in the O.A. and record provided. We cannot go into a roving inquiry as per law settled in this regard. We find no infirmity in the matter. We must mention that in the interest of justice, we allowed M.P.855/2000 and M.P. No.650/95 for condonation of delay.

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13. In view of the detailed discussions made above, we are not convinced that any case has been made out for providing the relief/s sought in the O.A., or for interfering in any other manner. This O.A. is therefore dismissed, with no orders as to costs.

S.L. Jain
(S.L. Jain)
Member (J)

B.N. Bahadur
(B.N. Bahadur)
Member (A).

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17/3/4192
~~Order~~/Judgement despatched
to Applicant/Respondent (s)
on *17/4/92*

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