

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.689/1997

Date of Decision: 25.01.2001

Shri Suresh Karande & anr.

Applicants

Shri Suresh Kumar.

Advocate for Applicants

Versus

Union of India & 2 Ors.

.. Respondents

Shri R.K. Shetty

Advocate for Respondents 1 & 2

Shri V.S. Masurkar.

Advocate for Respondent No.3

CORAM: HON'BLE SHRI S.L. JAIN.

MEMBER (J)

HON'BLE SMT. SHANTA SHASTRY.

MEMBER (A)

- (1) To be referred to the Reporter or not? x
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 689/1997

THIS, THE 25TH DAY OF JANUARY, 2002

CORAM: HON'BLE SHRI S.L. JAIN. ... MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

1. Suresh Karande,
Additional Collector &
Controller, ENC & US
Old Customs House,
Mumbai-400 001.
2. Jayant Gaikwad,
Additional Collector &
Special Officer,
Departmental Enquiries,
Second Floor, D.D. Building,
Old Customs House,
Mumbai-400 001. ... Applicants

By Advocate Shri Suresh Kumar.

Versus

1. Union of India, through Secretary
Ministry of Personnel, Public
Grievances & Pensions,
Department of Personnel & Training,
New Delhi-110 001.
2. Union Public Service Commission,
through its Secretary, Shajahan Road,
New Delhi-110 011.
3. State of Maharashtra,
through Chief Secretary,
Government of Maharashtra,
Fifth floor, Mantralaya,
Mumbai-400 036. ... Respondents

By Advocate Shri R.K. Shetty for R1 & R2.
Shri V.S. Masurkar for R3.

.....2/-

O R D E R

Hon'ble Smt. Shanta Shastry. .. Member (A)

The applicants in this case belong to the State Civil Service of Maharashtra. They belong to 1979 batch and joined service on 27th February, 1980 and 24th March, 1980 respectively as Probationary Deputy Collector. After completion of 8 years of service, on or about March, 1987 they became eligible to be considered for appointment by promotion to the Indian Administrative Service (IAS).

2. A selection was held in the year for consideration of the State Civil Service Officers for appointment by promotion to the IAS. Applicants' name at Sl.No.24 and 26 respectively were also included in the zone of consideration. However, the applicants were not included in the select panel.

3. According to the applicants, the respondents had taken into consideration 14 vacancies based on the cadre strength of 1992. Whereas, the cadre review had become due in 1995 and as a result perhaps some more posts might have been added to the cadre, thus giving rise to more vacancies. The respondents did issue a notification on 26th June, 1997, wherein the vacancies for promotional quota had been shown as 88 as against 84 in 1992. Thus, for 1997, four more vacancies should have been taken into account for promotional quota. The respondents

had actually 12 vacancies for the year 1996-97 and based on that, as per rules, the number of persons brought on the select list is 20% more than the actual number of vacancies or plus 02 whichever is higher and therefore, 14 vacancies were brought on the select list as against 12 vacancies.

4. It is the contention of the applicants that not only the cadre review was not carried out in 1995, but also the composition of the cadre was not proper, in that while determining the promotion quota the State Deputation Reserve had not been taken into account even while issuing the notification dated 26.6.1997. The Government had not promoted any State Civil Service officers against the increased promotional quota in 1994-95, 1995-96 and 1996-97.

5. The applicants have relied on a judgement in the case of K.K. Goswamy Vs. Union of India TA No.81/86 decided by the Jabalpur Bench of the Tribunal, which held that deputation reserve listed at item No.5 of the Schedule under the Cadre Strength Regulations of the IFS has to be included for computing the promotional quota. This judgment was taken to Supreme Court by way of SLP and the same was dismissed. According to the applicants the ratio of the judgment is clearly applicable for IAS and IPS and the respondents therefore should have implemented the judgment of the Hon'ble Supreme Court in the year 1995. The applicants

then would have been in the zone of consideration in the year 1995 itself. In fact, the applicants state that even the Department of Personnel had written to various State Governments on 09.9.1996 to ratify their proposal of readjusting the composition of the IAs/IFS/IPS with regard to the direct recruits and the promotees in pursuance of the judgment dated 24.4.1995 of the Supreme Court. Therefore, it had become binding on the respondents to implement the judgment. Non-implementation has resulted in denial of their fundamental right to be considered for promotion. The applicants submit further that at the time of making the application there were 14 clear vacancies. There existed seven clear vacancies on 31.3.1997 when the meeting of the Selection Committee was held. But the aforesaid vacancies were ignored and the names of the applicants were not included in the select list.

6. The applicants further state that a proposal had been given by the Central Government to each of the State Governments that the training reserve should also be included in the proposed amendment to be made to the composition of the cadre. By the aforesaid amendment two more posts were likely to be added to the promotional quota of the State Civil Service Officers. Being aggrieved, the applicants have therefore, sought a direction to the respondents to include the deputation reserve in determining the promotional quota

of IAS promotees; to hold and declare that the applicants were entitled to include the deputation reserve in the promotion quota from the year 1995 when the Supreme Court had dismissed the SLP, to direct the respondents to hold a review selection from the year 1995 by assessing the promotion quota on the basis of the prayer (a) of the OA, to consider the applicants for promotion to IAS on the basis of the revised vacancies as per their seniority and to grant them all benefits like seniority, backwages and to direct the respondents not to recruit any direct IAS officers in the State of Maharashtra ~~State~~ till the time the ratio between the direct ~~IAS~~ recruits and promotee IAS officers is maintained as per the rule after the law laid down by the Supreme Court. The applicants have further prayed for inclusion of their names in the select list of the State Civil Service Officers for the year 1997 for promotion to the IAS.

7. The respondents have filed their reply and have stated that the quota of IAS officer in a State is determined under Rule 9 of the IAS recruitment rules 1954 and it is specified in the IAS Fixation of Cadre Strength Regulation, 1955. These rules are framed under Article 312 of the Constitution of India and are statutory in nature. In 1997 when the reply was filed on 20th November, 97 the promotion quota was fixed at 33 1/3% of the Senior Duty posts plus

Central Deputation Reserve. The issue whether the State deputation reserve should be included to arrive at the promotional quota is purely a policy matter of the Central Government. According to the respondents, it is not for the Tribunals to adjudicate as has been laid down by the Hon'ble Supreme Court reported in AIR 1990 (SC) page 1251. Further, the respondents submit that under Rule 4 (2) of the Cadre Rules, review of cadre strength has to be undertaken every five years and not every three years. Since the cadre strength of Maharashtra State had been last reviewed in 1992, it had to be reviewed only in 1997 and not in 1995 as claimed by the applicants. Therefore, reviewing the cadre strength from 1995 and considering the applicants from that date would tantamount to amending the rules retrospectively. The respondents further submit that after the Supreme Court dismissed the SLPs filed against the judgment of the Jabalpur Bench of the Tribunal in K.K. Goswamy as well as similar judgments of the Calcutta Bench, the Union of India had accepted the directions of the Jabalpur Bench of the Tribunal in TA 81/86 as absolute and decided to make it applicable as a matter of principle to all the A.I.S. as a whole notwithstanding the fact that the judgment of the Jabalpur Bench did not apply to IAS. Accordingly the respondents proposed ~~that~~ an amendment to the IAS Recruitment Rules 1954, IPS Recruitment Rules, 1954 Indian Forest Service Recruitment Rules 1966 to incorporate the principle of computing the promotion

quota in the three All India Services as $\frac{1}{3}$ rd of ~~the~~ some of the senior duty posts under the State Government, Central Deputation Reserve and the State Deputation Reserve. This actually would require consultation with the State Government also.

8. At the time of hearing on 03.01.2002 the respondents produced copy of the judgment of the Supreme Court in W.P. (Civil) 613/94 in the matter of Tamil Nadu Administrative Service Officers Association and another Vs. Union of India & Others. In the various writ petitions, Civil Appeal and SLP under consideration of the Supreme Court, the members of the Tamil Nadu & Haryana State Haryana Administrative Service have sought for a direction from the court to the respondents to encadre all the State Deputation Reserve posts, ex-cadre posts and temporary posts hitherto manned by the members of the IAS for a continuous period exceeding three years in the IAS cadre. The Supreme Court expressed the opinion that the petitioners were not entitled to twin reliefs sought for by them i.e. for a writ of mandamus to encadre the ex-cadre temporary posts, so also for the retrospective seniority in regard to the posts already included in the IAS cadre strength by virtue of 1997 amendments. By the time, the Supreme Court considered the case of the Tamil Nadu Administrative Service Officers Association, the Government of India had already issued an amendment in 1997 including the State Deputation

Reserve for working out the promotion quota. Therefore, the Supreme Court did not pass any separate orders on the inclusion of the State Deputation Reserve. The Supreme Court took note of the judgment of the Jabalpur Bench of the Tribunal in K.K. Goswamy's case (supra). The Supreme Court further directed that it would be open to the petitioners to file a detail representation to the Central Government giving all the particulars of the posts, which they consider as fit to be encadred and special reasons why they should be encadred with retrospective date and on such representation being made, the Central Government will consider this representation in consultation with the State Government concerned and take appropriate decision in this regard preferably within six months from the date of receipt of representation. Accordingly, the Tamil Nadu Administrative Service Officers Association gave a representation on 19.10.2000. The representation was considered by the respondents and replied to on 09th May, 2001 after carefully examining. The decision communicated by the Central Government on the proposals given by the Tamil Nadu Administrative Officers Association are as follows:-

- (i) With regard to the proposed encadrement of 20 posts which are stated to be in existence for more than 3 years it is the view of the Central Government that the IAS Cadre Rules, 1954 do not contain any provision for the automatic encadrement of ex-cadre posts upon their completing three years of existence. Hence, it is not possible for the Central Government to agree to the encadrement of posts merely for the reason that these have been in existence for a particular period of time.

...9/-

(ii) Regarding the "addition" of posts to the strength of the SDR, it is observed that under the provisions of the IAS (Cadre) Rules, the State deputation reserve is calculated as 25 percent of the Senior Duty Posts (SDP) in the cadre. The said Rules do not provide for any "addition" to the strength of the SDR by virtue of any additional posts which the State Government may be operating under this reserve. Hence, the Association's representation for addition of 13 more posts to the strength of the SDR of the cadre cannot be agreed to.

(iii) In view of the above, it is not possible for the Central Government to presently agree to any increase in the total authorized strength of the IAS Cadre of Tamil Nadu, as proposed by the Association.

Para 2 (ii) of this reply clearly indicates that the State Deputation Reserve is calculated as 25% of the Senior Duty Posts in the cadre. It has also been stated that no retrospective effect can be given.

9. The learned learned counsel for the respondents who produced the aforesaid letter submits that this clinches the issue and applies squarely to the case of the present applicants also. Even though the Government of India did carry out the amendments in 1997 to provide for inclusion of the State deputation reserve as 25% of the cadre strength for purpose of promotion quota the same cannot be given retrospective effect as ruled by the Hon'ble Supreme Court. The applicants in the present OA therefore, cannot get the benefit of the same with retrospective effect.

10. In the facts and circumstances of the case, the OA fails and is accordingly dismissed without any order as to costs.

Shanta I-
(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain -
(S.L. JAIN)
MEMBER (J)

at 25.1.2002
Order/Judgement despatched
to Applicant/Respondent (s)
on 19.2.2002.

PR
2/2.