

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.833/88

Date of order: 2-1-1996

1. Prem Sukh Maheshwari : Applicant

Vs.

Union of India & Anr. : Respondents

Mr.Rajendra Prasad : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondent No.1

Mr.B.M.Purohit : Counsel for respondent No.2

O.A.No.12/89

2. Shyam Sunder Joshi : Applicant

Vs.

Union of India & Anr. : Respondents

Mr.Rajendra Prasad : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondent No.1

Mr.B.M.Purohit : Counsel for respondent No.2

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM).

Since the counsel for the parties accept that the facts of the cases of S/Shri Prem Sukh Maheshwari and Shyam Sunder Joshi, are identical in all material respects these two O.As are disposed of by a common order.

2. In his application under Sec.19 of the Administrative Tribunals Act, 1985 Shri Prem Sukh Maheshwari has prayed that the order Annx.A1 dated 7.11.88 in so far as it relates to the fixation of the year of allotment and assignment of seniority to him in the Indian Administrative Service (IAS) may be set aside and the respondents Nos.1 and 2, the Union of India and the State of Rajasthan, respectively, may be directed to assign seniority to him of the year 1972. He has further prayed that his pay fixation may be ordered to be made in the IAS as per assignment of seniority as may be decided by the

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Tribunal.

3. This application was filed on 27.12.88 when the applicant was still in service. He retired on superannuation on 30.11.89. Earlier the O.A was disposed of by the Tribunal by order dated 30.7.94 but the review application filed by the applicant was allowed and the order passed earlier on 30.7.94 was recalled. Before that the applicant had filed an application on 12.5.89 seeking permission to amend the O.A and the amendments were allowed by order dated 22.12.90. By the amendments made in the O.A, the applicant sought an additional relief in the form of a direction to respondent No.1 to partially modify notification Annx.A7 dated 21.3.88 whereby the applicant was appointed to the IAS with a view to appointing him w.e.f. 1.6.1976 instead of 21.3.88.

4. The facts of his case as stated by Shri Maheshwari are that he was appointed to the Rajasthan Administrative Service (RAS) on 26.8.1955 on the basis of the first combined competitive examination held in 1955 vide order Annx.A2. One Shri S.C.Bhandari, who was also recruited from the same examination was however appointed to the RAS in 1957, but was later granted seniority of 1955 and was placed below the last person in the first batch of direct recruits to RAS appointed in 1955. Promotions within the RAS were to be made one-third on the basis of merit and two-third on the basis of seniority cum merit. He was promoted to Senior Scale of RAS in 1967 on officiating basis and in December 1970 on a regular basis on the basis of seniority cum merit. In 1974 he was appointed to the Selection Scale of RAS on officiating basis. When it came to appointment to the Selection Scale on a regular basis the vacancies of the years 1974 and 1975 were clubbed and a DPC was held in 1976. On 31.10.1975 the formula for making promotions to the Selection Scale was also changed to 'merit

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alone'. He was consequently not selected for the Selection Scale of RAS by the DPC of 1976 and was reverted to the Senior Scale by order dated 13.4.1976. Ultimately he moved the Rajasthan High Court by filing a Civil Writ Petition in 1978. The writ petition filed by him was decided on 15.10.85 (Annx.A5) and was allowed in his favour. Meanwhile, however, several persons junior to him in the RAS were promoted and appointed to the IAS. The State Govt. accepted the judgment of the High Court determined separate vacancies for the years 1974 and 1975 and constituted a fresh DPC on the basis of whose recommendations he was selected against the vacancies of 1974 to the Selection Scale. His seniority position in the RAS was also restored by order dated 17.12.85 passed by respondent No.2 (Annx.A6).

5. Further according to Shri Maheshwari, the Board for selecting candidates for appointment to the IAS from amongst RAS officers met on 18.12.85 and in the select list prepared by it he was placed at Sl.No.2. He was appointed to the Rajasthan cadre of the IAS vide notification dated 21.3.88 (Annx.A7). After the aforesaid appointment he submitted a representation requesting the respondents to allot him the seniority of the year 1974 or 1975 and fix his seniority above Shri Matadeen Sharma, an officer of his own batch in the RAS who was junior to him. However, the respondents incorrectly allotted 1979 as the year of seniority to him in the IAS.

6. Further according to Shri Maheshwari, the juniormost officer of the batch of RAS officers to which he belonged, viz. Shri S.C.Bhandari had approached the Rajasthan High Court by filing a writ petition in 1967 challenging the appointment of some of his juniors in the RAS to the Senior Scale. This matter was ultimately decided on 22.9.87, the writ petition was allowed and the High Court directed that Shri Bhandari

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should be placed above his four juniors in the PAS and also in the IAS to which he had been promoted in the meantime. The respondents accepted the judgment of the High Court and revised the appointment of Shri Bhandari to the IAS w.e.f. 1.6.1976 instead of 16.12.1980 and refixed the year of allotment of seniority assigned to him as 1972 as against 1976 previously allotted to him.

7. Shri Maheshwari's case is that since Shri Bhandari was junior to him in the ~~IAS~~^{RAS} all throughout and since his seniority in the PAS had been restored after the State Govt had implemented the judgment of the Rajasthan High Court, he is entitled to the same benefit of the year of promotion to the IAS as given to Shri Bhandari vide Annx.All, being the notification dated 9.3.88 and assignment of year of allotment. The applicant has, therefore, sought appointment to the IAS in the year 1976 and allotment of seniority of 1972. He has assailed the action of the respondents in not giving him the benefit as due to him as arbitrary and violative of Articles 14 and 16 of the Constitution.

8. As regards Shri Shyam Sunder Joshi, his prayers in the O.A filed on 4.1.89 are the same as that made by Shri Prem Sukh Maheshwari. Shri Joshi had also filed an amendment application which was allowed by the Tribunal on 22.10.90 and after the amendment was allowed the reliefs sought by him are also three in number as in the case of Shri Maheshwari and these are the same reliefs as claimed by Shri Maheshwari. Earlier the O.A. filed by Shri Joshi was also disposed of by the Tribunal vide order dated 30.7.94 but on a review application filed by him, the order passed on 30.7.94 was recalled. The respondents have filed replies to the show cause notice for admission of the O.A as also to the application seeking amendment of the O.A. The dates of appointment of Shri

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Joshi to PAS and to Senior Scale of PAS are the same as that of Shri Maheshwari. Shri Joshi was also appointed to the Selection Scale on officiating basis and was reverted to the Senior Scale by order dated 13.4.1976 (Annx.A4) on his not being selected for regular appointment to the Selection Scale. The difference between the cases of Shri Maheshwari and Shri Joshi is that whereas Shri Maheshwari filed a writ petition in the Rajasthan High Court against his non-promotion to the Selection Scale of PAS, Shri Joshi did not do so. However, when the judgment of the Rajasthan High Court in the case of Shri Maheshwari was implemented, Shri Joshi was also given the benefit of promotion to the Selection Scale and seniority in the PAS and his position in the seniority list was restored to the point to which he had before his supersession by order dated 17.12.85 (Annx.A6). The subsequent facts regarding the appointment of Shri Joshi to the IAS, the year of appointment to the IAS and the allotment of the year of seniority etc, are the same as in Shri Maheshwari's case. In other words, Shri Joshi was appointed to the IAS by order dated 21.3.88 (Annx.A7) by which Shri Maheshwari was also appointed to the IAS and his year of allotment was also determined as 1979. He has also sought the same seniority as granted to Shri Bhandari who according to him was throughout his junior in the PAS. Shri Joshi retired from service on 31.1.1990.

9. The respondents filed relies to the show cause notice regarding admission of the O.A and also replies to the application seeking leave to amend the O.A.

10. In their reply to the show cause notice for admission, respondent No.1 has stated that the year of allotment of an officer appointed to the IAS on or after 6.11.87 is regulated by the provisions of IAS (Regulation of Seniority) Rules, 1987 (for short the Seniority Rules) as amended on 18.1.1988. The

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applicant has, therefore, to be assigned the year of allotment as per the said amended rules. The year of allotment of Shri Bhandari, who was allotted 1972 as the year of allotment was determined with reference to the Seniority Rules prevailing at that point of time and in pursuance of the directions of the Court. The applicants' case is not on all fours with that of Shri Bhandari. Under the provisions of Rule 3(3)(ii) of the said Rules, a promotee officer is entitled to get the weightage of certain number of years for the various spells of service rendered by him in the State Civil Service for fixation of his year of allotment in the IAS subject to the maximum weightage of 9 years. Since the applicants had been appointed to the IAS w.e.f. 21.3.88, the maximum weightage of 9 years available to him would take his year of allotment to 1979 and therefore, the applicant has been correctly assigned the said year of allotment. Respondent No.2 in its reply has also taken the same position.

11. The reply of the respondents in Shri Joshi's application is the same as that in the case of Sh. Maheshwari.

12. During the arguments, the learned counsel for the applicants stated that since both the applicants had already retired from service all that they would get would be the financial benefits accruing to them from grant of seniority in the IAS from the year 1979. He added that the applicants were seeking reliefs with reference to the orders passed by respondent No.1 on 9.3.88/22.3.88 (Annx.All) in the case of Shri Bhandari, in whose case appointment to the IAS has been made w.e.f. 1st June 1976 and the year of allotment has been fixed as 1972.

13. The learned counsel for the respondents during the arguments have taken the stand that persons likely to be affected by grant of higher seniority to the applicants had

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not been impleaded as parties and therefore, these applications were liable to be dismissed on this ground alone. They added that even if the two applicants had already retired, yet, the year of allotment in the IAS continued to be a matter of prestige and the prestige of those over whom the applicants would get an earlier year of allotment would be adversely affected. They added that the order of appointment of the applicants to the IAS, Annx.A7 dated 21.3.88 had not been challenged by the applicants. Further, benefits granted to Shri Bhandari by Annx.All were on the basis of the judgment passed by the Rajasthan High Court and this judgment was not in rem and therefore the applicants were not entitled to reliefs in terms of this judgment. Further, according to them while Shri Maheshwari had moved the Rajasthan High Court seeking relief against his supersession in the matter of promotion to the Selection Grade and restoration of his seniority in the RAS, he had not obtained consequential reliefs such as a higher year of appointment/allotment to the IAS. Shri Joshi had not at all moved the High Court when he was superseded in the matter of grant of Selection Scale in the RAS but he had got the benefit of Selection Scale in PAS from the year 1974 and restoration of his seniority in the PAS on the basis of implementation of the judgment of the High Court in Shri Maheshwari's case. Therefore, he was also not entitled to benefits granted to Shri Bhandari.

14. The learned counsel for the respondent No.1 cited the judgment of Hyderabad Bench of the Tribunal in M.Erishnaswamy Vs. Union of India & Anr, (1995) 31 ATC 71 in which the Tribunal held that seniority in the IAS i.e. allotment of the year under the Seniority Rules is done on the basis of the year in which the officer is appointed to the service. Since the applicants were appointed to the IAS in the year 1988,

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their seniority or the year of allotment has to be worked out with reference to 1988 and therefore they had been correctly allotted 1979 as the year by granting them weightage of 9 years which was the maximum weightage admissible under the Rules. He also cited before us the judgment of the Madras Bench of the Tribunal in Saravana Bhavan & Ors Vs. Union of India, 1995(3) SLF 14, wherein the Tribunal held that judgments of courts did not furnish a cause of action to the applicants. Since the applicants in the present case wanted, in effect, to take benefit of the judgment of the High Court delivered in S.C. Bhandari's case, such benefit could not be granted to them because that judgment was not in rem. Since that judgment was delivered in September 87, the applications filed by the applicants were barred by limitation as these had been filed in December 1988 and January 1989.

15. The learned counsel for respondent No.2 also argued the matter on lines similar to those on which arguments were advanced by the learned counsel for respondent No.1.

16. We have heard the learned counsel for the parties, have gone through the material on record and also the judgments cited before us. None of the preliminary objections raised by the respondents are tenable. It is true that persons junior to the applicants have not been impleaded as respondents in these applications. However, both the applicants have already retired from service now. At this stage they would not be entitled to any benefit arising from allotment of seniority with reference to an earlier year by jumping over any serving officer. All that they would ^{be} entitled to now, if they succeed in the present applications, are monetary benefits arising from allotment of an earlier year of seniority in the IAS. The argument that even after retirement the year of allotment in the IAS continues to be relevant for

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the prestige, etc. of the retired officers is not material for our purpose. Therefore, the preliminary objection as to non-impleading of necessary parties is rejected.

17. The High Court judgment in the case of S.C. Bhandari was delivered in September 87 (Annx.A5) and it was implemented by the respondents by passing order dated 9.3.88, which is at page 2 of Annx.All. By this order Shri Bhandari was appointed to the IAS w.e.f. 1.6.1976 instead of 16.12.80. By communication dated 22.3.88 which is at page 1 of Annx.All, the year of allotment of Shri Bhandari to the IAS was determined as 1972, which was stated to be the year of allotment assigned to Shri O.H. Joshi, above whom Shri Bhandari had been placed in the relevant select list. The applicants have pleaded that they were both senior to Shri Bhandari all throughout their service in the PAS and when they lost their seniority on account of nonappointment to the selection scale for the year 1974, such seniority was restored subsequently. They have claimed that their position is identical to that of Shri Bhandari, and if Shri Bhandari was appointed to the IAS w.e.f. 1.6.1976 and his year of allotment was assigned as 1972 they are entitled to the same treatment. No doubt the issue of order dated 9.3.88 appointing Shri Bhandari to the IAS w.e.f. 1.6.76 was in pursuance of the judgment of the Rajasthan High Court delivered in September 1987 and on the basis of this appointment his year of allotment was assigned as 1972. The judgment delivered in Shri Bhandari's case was on merits and the High Court's judgment merely corrected the error in not appointing Shri Bhandari to the IAS w.e.f. 1.6.1976. The respondents have not denied that the applicants were all throughout senior to Shri Bhandari in the PAS and they have also not spelled out in their reply any distinguishing feature which would justify a different treatment being

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accorded to S/Shri Maheshwari and Joshi from that accorded to Shri Bhandari. In other words as regards the merits of the cases of the applicants before us now ~~are concerned~~, they are in the same position as Shri Bhandari. Therefore, they would be entitled to the same treatment in the matter of year of appointment to the IAS and allotment of seniority therein.

18. The objection of the respondents to grant of same treatment to the present applicants as extended to Shri Bhandari, is that the latter had approached the High Court and it was only as a consequence of the judgment of the High Court that benefit was extended to Shri Bhandari. However, the applicants before us have sought the same benefits as granted to Shri ^{Bhandari} by orders dated 9.3.88 and 22.3.88 (Annx.All). They have not specifically sought relief with reference to the judgment of the Rajasthan High Court. It is true that the judgment of the High Court is not in rem but the respondents accepted the judgment which was on the merits of the case and made necessary changes in the year of appointment and the year of allotment to the IAS in Bhandari's case. The applicants are legitimately entitled to rely upon these orders to claim the same benefit for themselves. Apart from the technical objections raised by the respondents regarding the claims made by the applicants before us, they have not shown how on merits their cases are different from that of Shri Bhandari. Both these O.As have been filed within a period of one year from March 1988, the month in which the orders at Annx.All in favour of Shri Bhandari, were passed. The O.As are, therefore, within the period of limitation with reference to a favourable order passed in the case of a person junior to the applicants in the erstwhile service from which they were all appointed to the IAS.

19. The objection raised by the respondents that order

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Annx.A7 by which the applicants were appointed to the IAS w.e.f. 21.3.88 has not been challenged or that they have not challenged order Annx.A1 dated 7.11.88 by which year of allotment 1979 was assigned to them is not tenable. By filing the amendment applications which were allowed, the applicants had sought ~~some~~ benefits as granted to Shri Bhandari. One of the prayers as per the amended application is that the Tribunal may direct respondent No.1, Union of India to partially modify the notification Annx.A7 and to appoint the applicants w.e.f. 1.6.1976 instead of 21.3.1988. Therefore, the applicants took necessary care to make a proper prayer for relief by filing an amended application.

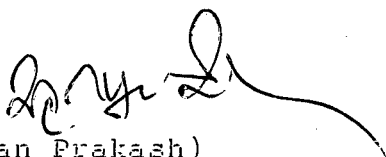
20. The judgments cited by the learned counsel for the respondent No.1 have been duly considered. As regards the Tribunal's judgment in Krishnaswamy's case, there is no dispute that the year of allotment has to be assigned with reference to the year of appointment to the IAS. However, there would be cases where the year of appointment itself is challenged and on that basis year of allotment assigned is also challenged. In the two applications before us both these have been challenged. This judgment, therefore, does not stand in the way of relief being granted to the applicants if otherwise due to them. As regards the Tribunal's judgment in Sarvana Bhavan's case, regardless of the question whether a judgment furnishes a cause of action or not, the applicants in the present case have based their claim on the orders passed in the case of Shri Bhandari on the ground that on merits their cases are identical in all material respects to that of Shri Bhandari. The applications have been filed within the date of limitation reckoned from the date on which the orders on Shri Bhandari's case were filed. What is even more significant is that by the amended application they have

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sought relief against order Annx.A7 dated 21.3.88 by which they were appointed to the IAS w.e.f. the date of the said order. The applications filed are therefore within the limitation period. These are also maintainable on merits as order Annx.A7 which they have challenged has been passed in the cases of the applicants themselves.

21. For all reasons discussed above, we are of the view that the applicants are entitled to the same benefit as were extended to Shri Bhandari by orders dated 9.3.88 and 22.3.88 at Annx.All passed in the case of Shri Bhandari. The respondents are directed to pass necessary orders within a period of 6 months from the date of the receipt of a copy of this order. As no other benefits flowing from the change of the year of appointment to the IAS and the change of year of allotment in the IAS are material at this stage, when both the applicants have already retired from service, they shall only be entitled to the consequential monetary benefits including the pensionary benefits.

22. The applications are disposed of accordingly with no order as to costs.



(Ratan Prakash)
Member(Judl.)



(O.P.Sharma)
Member(Adm.).