

72

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.337/90.

Date of Judgement : 16-9-93.

B.Bhima Raju, I.A.S.

.. Applicant

Vs.

1. Union of India, Rep. by
The Under Secy., to Govt.,
Min. of Personnel, Public
Grievances & Pensions,
Dept. of Personnel & Trg.,
New Delhi.
 2. State of Andhra Pradesh, Rep. by
The Chief Secy., to Govt.,
Genl. Admn. Department,
Secretariat Buildings,
Hyderabad.
 3. Union Public Service
Commission, Rep. by
The Secy., to Commission,
New Delhi.
- .. Respondents

Counsel for the Applicant :: Shri V.Venkataramaiah &
Shri G.Raghuram

Counsel for the Respondents :: Shri N.R.Devaraj, Sr. CGSC &
Shri D.Panduranga Reddy,
SC for AP

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

J u d g e m e n t

{ As per Hon'ble Shri A.B.Gorthi : Member(A) }

The Applicant joined service under the State Govt. of Andhra Pradesh on 18.6.56 as a Commercial Tax Officer and Comm1. was promoted as Dy. Commissioner of Taxes on 1.7.70 and as Jt. Commissioner in August, 1981. He was selected for appointment to the Indian Administrative Service (I.A.S. for short) in December, 1986 but his actual appointment was made w.e.f. 1.12.87. He represented that his year of allotment should be 1963, but the Respondents fixed his

year of allotment as 1977 vide ^{their} order dt. 26.3.90. The Applicant's claim now is that the order dt. 26.3.90 issued by the 2nd Respondent be set aside and that he be assigned 1963 as the year of allotment, placing his seniority next below Shri G.Kumaraswamy Reddy.

2. The Applicant belonged to the 'non-State Civil Service' of Andhra Pradesh. His name was recommended by the State Government in 1976, 1977 and 1985 for appointment to I.A.S. but he was not selected by the Selection Committee. He was finally selected and appointed to I.A.S. w.e.f. 1.12.87. He requested the authorities concerned that as he joined Govt. service in 1956 and was promoted to the post of Dy. Commissioner in 1970, he was entitled to 1963 as his year of allotment because, the only other officer who had longer service in the State Civil Service viz: Shri G.Kumaraswamy Reddy, I.A.S. was allotted the same year. He claimed that the post of Dy. Commissioner of Comm. Taxes which he held w.e.f. 1.7.70 is equivalent to the senior post in the I.A.S. The Respondents rejected the plea of the Applicant by holding firstly that the post of Jt. Commissioner held by him w.e.f. 1981 could only be considered as equivalent to the senior scale ~~post~~ and secondly that Shri G.P.Reddaiah who was selected in 1985 was assigned 1977 as the year of allotment. Consequently, the Applicant's year of allotment was also fixed as 1977, as he too was considered for selection in 1985 but was not selected.

3. The Applicant being a member of the 'non-State Civil Service' was eligible for recruitment to I.A.S. in accordance with Rule 8(2) of the I.A.S. (Recruitment) Rules, 1954 (hereinafter referred to as Recruitment Rules). It reads as under:-

"8. Recruitment by promotion or selection for appointment to State and Joint Cadre.- (1) xxx

(2) The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after

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consultation with the State Government and the Commission, from time to time, recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State *] but who holds a gazetted post in a substantive capacity [."

*] [Added vide MHA Notification No.13/10/57-AIS(III)-A dt. 29.7.1958.

4. The seniority of I.A.S. officers is governed by I.A.S. (Regulation of Seniority) Rules, 1954 (hereinafter referred to as "Seniority Rules") and is related to the year of allotment assigned to each officer. As regards officers appointed by selection under Rule 8(2) of the Recruitment Rules, the assignment of year of allotment is regulated vide Rule 3(3) (c) which reads as under:-

- "3(3) The year of allotment of an officer appointed to the Service after the commencement of these rules, shall be--
- (a) xxxxx
 - (b) xxxxx
 - (c) where the officer is appointed to the Service by selection in accordance with sub-rule (2) of rule 8 of the Recruitment Rules, such year as may be determined ad hoc by the Central Government on the recommendation of the State Government concerned and in consultation with the Commission:

Provided that he shall not be allotted a year earlier than the year of allotment of an officer appointed to the Service in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, whose length of service in the State Civil Service is more than the length of continuous service of the former in connection with the affairs of the State."

5. In view of the above statutory provisions, the Applicant claims that his year of allotment should have been determined ad hoc by the Central Government on the recommendation of the State Government and in consultation with the Union Public Service Commission. Shri V.Venkataramanaiah, learned counsel for the Applicant submitted that having regard to the fact that the non-State Civil Service Officers belong to different categories there can be no uniform rule for assigning the year of allotment to such officers and the case of each officer has to be considered on its own merits on the basis of the recommendation of the State Government and in consultation with the Commission. He further urged that in view of the proviso to Rule 3(3) (c) of the Seniority Rules, the year of allotment of a non-State Civil Service Officer has to be

3008

not earlier than the year of allotment of a State Civil Service officer appointed to I.A.S., whose length of service in the State Civil Service is more than the length of continuous service of the former in connection with the affairs of the State. Shri G.Kumaraswamy Reddy, I.A.S. being the only officer appointed to I.A.S. from the State Civil Service ----- the Applicant who also joined the State Civil Service in 1956 should be allotted the same year (1963) as was allotted to Shri G.Kumaraswamy Reddy. In any case, keeping in view the fact that the Applicant was continuously officiating in the senior post of Dy.Commissioner of Comm. Taxes w.e.f. 1.7.70, his year of allotment should have been fixed on the analogy of Rule 3(3)(b) of the Seniority Rules. The same is reproduced below:-

"3(3) The year of allotment of an officer appointed to the Service after the commencement of these rules, shall be--

(a) xxxxx

(b) where the officer is appointed to the Service by promotion in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of those rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former:

Provided that the year of allotment of an officer appointed to the Service in accordance with sub-rule (1) of rule 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 officer recruited to the Service in accordance with rule 7 of those Rules so started officiating, shall be determined ad hoc by the Central Government in consultation with the State Government concerned."

6. The learned counsel for the Applicant urged that in view of the reasonably exhaustive statutory provisions governing the year of allotment, the Respondents cannot go beyond the scope of the Rules and assign the year of allotment in an arbitrary manner.

7. The Respondents clarified that in the case of the Applicant they had to follow the instructions contained in--

Govt. of India letter No.14014/48/77-AIS(I) dt. 6.6.1978

which reads as under:-

"I am directed to say that in this Department's letter No.14014/83/76-AIS(I) dt. 15.2.1977 on the abovementioned subject it is laid down that the seniority of a non-State be determined in consultation with U.P.S.C. on the analogy of rule 3(3)(b) of the I.A.S.(Regulation of Seniority) Rules, 1954 subject to the proviso to rule 3(3)(c) of the said rules

2. The question whether there should be a depression of year of allotment on a non-State Civil Service Officer on account of the fact that he had been rejected by the Selective Committee on an earlier occasion, has been examined in consultation with the UPSC. It has been decided that a non-State Civil Officer who was considered unsuitable by the Selection Committee for appointment to the I.A.S. on an earlier occasion should not get a year of allotment higher than the year of allotment assigned to the non-State Civil Service Officer who was also considered along with the former in earlier year but was found suitable by the Selection Committee and was, therefore, appointed to the I.A.S. earlier than him. Such an officer may, however, get the same year of allotment but he should be placed below the non-State Civil Service Officer allotted the same year of allotment who was selected and appointed to the I.A.S. in an earlier year in preference to the non-State Civil Service Officer appointed to I.A.S. later

3. It has also been decided in consultation with the UPSC that as between two or more non-State Civil Service Officers selected at the same time, the officer who was placed high in order of merit would be senior to the Officers placed lower in order of merit."

8. The Applicant was recommended for selection to I.A.S. but he did not succeed in 1976, 1977 and 1985. Since Shri G.P.Reddaiah who was selected in 1985 was assigned 1977 as the year of allotment, the Applicant cannot be assigned a year earlier than 1977 in view of the Government's letter dt. 6.6.1978. This contention of the Respondents has been challenged by the learned counsel for the Applicant mainly on the ground that the scope of the statutory provisions cannot be circumscribed by executive instructions nor the former can be supplanted by the latter. Shri V.Venkataramanaiah contended that the Government's letter dt. 6.6.1978 is contrary to Rule 3(3)(c) of the Seniority Rules which stipulates that the year of allotment of a non-State Civil Service Officer appointed to I.A.S. shall be determined ad hoc by the Central Government on the recommendation of the

77

State Government and in consultation with the UPSC. The rule thus vests a certain amount of discretion with the Central Government which it is expected exercise in consonance with the totality of the Seniority Rules. The impugned Government's letter dt. 6.6.1978, by laying down a rigid formula for the determination of the year of allotment, gives a go-bye to the relevant statutory provisions, besides denying the authorities concerned an opportunity to consider such vital factors as length of Class I service and date of continuous officiation in a senior scale post. We need not delve too deep into the validity of the Government's circular dt. 6.6.1978, because it came up for scrutiny in the case of Union of India Vs. G.K.Sangameshwar & Others reported in 1993(4) SLR 577. Upholding the validity of the Government's instructions, the Hon'ble Supreme Court observed as under:-

"19. We are unable to accept the said contention. It is no doubt true that in Rule 3(3)(c) of the Seniority Rules, a discretion has been conferred on the Central Government to determine the year of allotment to be assigned to an officer who is appointed by selection in accordance with sub-rule (2) of Rule 8 of the Recruitment Rules and while making the said determination, the Central Government has to consider the recommendation of the State Government concerned and has also to consult the Union Public Service Commission. But this does not preclude the Central Government from laying down the principles to be followed in the matter of exercise of the discretion in this regard. Such principle can be evolved keeping in view the fact that a number of officers are appointed to the Service by selection in accordance with sub-rule (2) of Rule 8 of the Recruitment Rules and there are certain common features which may afford a rational basis for determination of the year of allotment for the purpose of assigning seniority. Such principles would have the advantage of excluding arbitrariness in the exercise of the discretion and would ensure fairness in such determination. We are unable to construe the provision contained in Rule 3(3)(c) of the Seniority Rules as excluding the laying down of such principles for the exercise of discretion and we are unable to hold that the laying down of such principles is violative of the provisions of Rule 3(3)(c) of the Seniority Rules. Reference, in this context, may be made to the decision of this Court in S.G.Jaisinghani Vs. Union of India, 1967(2) SCR 703 : 1967 SLR 482 (SC) wherein it has been laid down-

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities,

6/10/78

must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law." (p.178)

20. We are, therefore, of the opinion that laying down of principles to be followed in the matter of determination of the year of allotment, by itself, cannot be held to be violative by Rule 3(3)(c) of the Seniority Rules."

9. In view of the fact that the Government's letter dt. 6.6.1978 has been held to be valid and as the Respondents fixed the year of allotment of the Applicant strictly in accordance with the extant instructions, we do not consider it necessary to examine the issue whether the post of Dy. Commissioner of Comm. Taxes can be said to be a senior scale post or whether it was only the post of Jt. Commissioner that can be accepted as equal to a senior scale post. We also need not go into the question of correctness ^{of} fixing the year of allotment of Shri T.Venka Reddy who stood first in the order of merit in the batch of 1986 selectees, as 1977 and that of Shri T.Ramamohana Rao who was second, as 1974. Those issues will have no bearing on our conclusion that the year of allotment of the Applicant was rightly determined by the Respondents.

10. We have seen that the Seniority Rules of 1954 and 1987 are almost identical so far as provisions of Rule 3(3)(c) of the 1954 Rules are concerned. Except for a few verbal changes, they are the same as in Rule 3(3)(iii) of the 1987 Rules. It makes no difference therefore whether the Seniority Rules of 1954 apply to the case of the Applicant or those of the 1987 Rules.

11. Before we conclude we must advert to the contention of the Applicant that his year of allotment was determined by the Central Government without obtaining the recommendation of the State Government and without consulting the UPS

79

The Respondents made available the relevant records from which it would be apparent that the case was processed first by the State Government which had forwarded the bio-data of the Applicant to the Central Government requesting the latter to determine the seniority of the Applicant on the basis of information furnished in the bio-data. The correspondence further discloses that the UPSC was consulted by the Central Government before the Applicant's year of allotment was determined. We, therefore, find no irregularity in this regard.

12. In the result, the O.A. is dismissed. No costs.

T. Chandrasekhara Reddy
(T.Chandrasekhara Reddy)
Member(J).

A.B. Gorthi
(A.B.Gorthi)
Member(A).

Dated: 16 Sept., 1993.

br.

[Signature]
Deputy Registrar(J)

To

1. The Under Secretary,-- to Govt., Union of India
Min.of Personnel, Public Grievances & Pensions,
Dept.of Personnel & Training, New Delhi.
2. The Chief Secretary to Govt., State of A.P.,
General Admn. Department, Secretariat Buildings, Hyderabad.
to Commission,
3. The Secretary/ Union Public Service Commission,
New Delhi.
4. One copy to Mr.G.Raghuram, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr. CGSC.CAT.Hyd.
6. One copy to Mr.D.Panduranga Reddy, Spl.Counsel for A.P.Govt.CAT.Hyd.
7. One copy to Deputy Registrar(J)CAT.Hyd.
8. One copy to Library, CAT.Hyd.
9. Copy to All Benches and Reporters as per standard list of CAT.Hyd.
10. One spare copy.

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page 6
7

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COMPALED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 16-9-1993

ORDER/JUDGMENT:

For J. P. Rao

M.A./R.A./C.A.No.

in

O.A.No. 337/90

T.A.No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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