

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

* * *

D.A. No. 512/90

Dt. of Decision : 9.12.93.

1. Y. Ramamohan Rao
2. C. Muralidhara Rao
3. L. Krishna Bhupal
4. N. Ramakrishna Rao . . Applicants.

Vs

1. The Government of India,
represented by its Secretary,
Department of Environment Forest
wild life Ministry of environment
Forests & wild life, Parayatharan Bhavan,
C.G.O Complex, Lodi Road,
New Delhi - 110 003.
2. The Government of Andhra Pradesh,
Reptd. by its Principal Secretary,
Energy, Forests Environment, Science
and Technology, Secretariat,
Hyderabad.
3. Union Public Service Commission,
Reptd. by its Secretary, New Delhi.
4. Sri Madhukar Raju,
Conservator of Forests,
Warangal Forests Circle,
Warangal.
5. Sri, C.Sivasankara Reddy,
Conservator of Forests,
Adilabad Forest Circle,
Adilabad.
6. Sri Hitesh Malhotra, Director,
Project Tiger Field, Srisaillam,
Kurnool Dist. . . Respondents.

Counsel for the Applicants : Mr. M.R.K.Choudhary

Counsel for the Respondents : Mr. N.V.Ramana, Addl.CGSC
Mr.D.Panduranga Reddy.
Spl.counsel for A.P.
Mr.K.Sudhaker Reddy, RR 40

CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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4. The recruitment of direct recruits to I.F.S. is to junior time scale vide Rule 6(2) of the Recruitment Rules. But the promotion for State Forest Service employees to IFS is in the senior time scale of pay as can be seen from Rule 6(3) of the Recruitment Rules. Rule 6-A of the Recruitment rules lays down that the State Government concerned has the power to appoint the direct recruits to posts in the senior time scale of pay. It is necessary for the State Government to consider the length of service and experience and suitability for appointment to a post in the senior time scale of pay while appointing the direct recruits to the senior time scale of pay. The Central Government issued letter dated 24-9-73 to the effect that the direct recruits to the Indian Forest Service may be considered for promotion to senior time scale on completion of five years of service (now reduced to four years of service) including the period of their training. The training has to be undergone by them during the period of probation which is for three years.

5. If the letter dated 24-9-73 is valid, R-4 was eligible for promotion on or after 1-3-80 while R5 & R6 were eligible for promotion on or after 1-3-81 as by then they would complete five years of service. But R-4 was promoted to senior time scale on 1-3-78 and R5 and R6 were promoted to senior time scale on 29-3-79, as already referred to, even before they completed five years of service. Sri K.Someswara Rao completed five years of service on 1-3-79 but he was promoted to senior time scale on 1-4-77.

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3. The four applicants herein were initially recruited to A.P.State Forest Service. Rule 8 of the I.F.S.(Recruitment) Rules, 1966 (for short Recruitment rules), provides for recruitment to IFS posts by promotion from amongst the substantive members of the State Forest Service. Rule 4(2)(b) of the Recruitment Rules envisages the recruitment to IFS by promotion of substantive members of the State Forest Service. Rule 4(1) of the Recruitment rules refers to initial recruitment to IFS i.e. recruitment in 1966, the year in which the recruitment rules 1966 had come into effect. Even by then, the first applicant herein was eligible for initial recruitment, but was not promoted to IFS at the time of initial recruitment as he was not found suitable. The applicants 2 to 4 were eligible for consideration for promotion to IFS by 1977. But the committee did not meet in 1977 for consideration of the A.P.State Forest Service members for promotion. The concerned committee met on 4-12-78 and empanelled all these four applicants and some others for promotion to IFS. The list prepared by the committee was approved by the Union Public Service Commission on 9-2-79 and the same was affirmed by the Central Government and forwarded to the State Government on 25-4-79. But even before that date, R-4 was promoted to senior time scale on 1-3-78 and R-5 and R-6 were promoted to senior time scale on 29-3-79.

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In this context it is also necessary to refer to Explanation-1 to Rule 3(2)(c) of the ROS Rules which states that for consideration of commencement of continuous officiation as envisaged under Rule 3(2)(c), the date of inclusion of the name of the promotee in the select list ~~is the starting point~~ or the date on which the promotee was promoted on officiation basis which ever is later has to be considered, and ^{as} in this case even by 10-9-79, the date on which the applicants were promoted on officiating basis, and their names were included in the select list for promotion to IFS and ~~as such~~ 10-9-79 was taken as the date of commencement of continuous officiation of the applicants by the concerned authority in assigning 1976 as year of allotment to them. ^{In our cadre of IFS,} Those who belong to the earlier years of allotment are senior to those who belong to later years of allotment.

7. The basis of the contention for the applicants that the year 1974 should be assigned to them as the year of allotment is that the period of officiation of the direct recruits in the senior time scale before they completed five years of service should be ignored by treating such officiation as ^{local arrangement} purely temporary or ~~as illegal appointment~~ as contemplated under Rule 6-A(3)(b) of the Recruitment Rules and it is only the date on which the direct recruits complete five years of service in case they were promoted to senior time scale on officiating basis earlier to that date, ^{which} has to be

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6. The year of allotment is relevant for fixing inter-se seniority for the direct recruits and promotees to I.F.S. Rule 3(2)(c) of ROS rules states that the year of allotment that is to be assigned to promotees (that is, who are recruited in accordance with Rule 8 of the Recruitment Rules) is the year of allotment of the junior most direct recruits, that is, officers recruited to the service in accordance with Rule 7 of the Recruitment rules, who officiated continuously in senior post from a date earlier than the commencement of such officiation by the promotees. The applicants herein, as already referred to, are promotees to IPS. The applicants were promoted to I.F.S. on officiation basis on 10-9-79. They pleaded that till they were regularly promoted they were in continuous service in that promoted cadre. By taking 10-9-79 as the date of continuous officiation of the applicants, the junior most direct recruit who was in continuous officiation has to be identified. It was found that R-6 was the junior most of the batch to whom 1976 was allotted as the year of allotment. R-6 was in continuous officiation from 29-3-79. The junior most of the direct recruits to whom ¹⁹⁷⁷~~1979~~ was assigned as the year of allotment was not on the senior time scale by 10-9-79. As such the applicants were assigned 1976 as the year of allotment in accordance with the Rule 3(2)(c) of the ROS Rules.

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Recruitment Rules, a statutory provision. The same view was taken by this Hyderabad Bench as per judgment dated 16-2-89 in O.A.No.108/86 and also by the Cuttack Bench in T.A.No.249/86 (Gopal Chandra Vs. UOI) and 1990(1)ATJ 197 (Manmohan Praharaj Vs. UOI & Ors.) ^{and} as such the date of commencement of continuous officiation of direct recruits in the senior scale and not the date on which they completed five years, has to be taken into consideration for assigning the year of allotment to the promotees as per Rule 3(2)(c) of ROS Rules.

9. The Deputy Secretary to the Government of India in the Ministry of Environment and Forests, New Delhi filed the reply (counter) on behalf of R-1. It was stated therein that ~~even by the as per~~ memorials have to be presented within three years, R-1 refused to consider the representations of the applicants on merits as they were filed more than four years after the relevant order dated 18-3-83 was communicated. It is also alleged therein that DP&AR letter No.3/7/72-AIS(IV) dated 24-9-73 (Govt. of India) has no statutory force and ~~was~~ so it cannot control or regulate Rule 6-A(2) of the Recruitment Rules and as such the State Government has power to promote the direct recruits to senior time scale even before they completed five years of service. The reply (counter) filed for the State Government (R-2) is to the same effect.

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taken as the date of commencement of officiation ^{for the purpose of} ~~referred to in~~ Rule 3(2)(c) of the ROS Rules. Shri K. Someswara Rao completed five years of service on 1-3-79 and as Sri Someswara Rao was the junior most of the direct recruits to whom 1974 was assigned as the year of allotment, and as the junior most of the direct recruits to whom 1975 was assigned as year of allotment has not completed five years by 10-9-79, the date of commencement of officiation ~~of officiation of these~~ applicants in the senior time scale, they have to be assigned 1974 as the year of allotment, and as R-4 was assigned 1975 as the year of allotment, these applicants have to be placed above R-4 and below Sri K. Someswara Rao. The applicants submitted representations dated 3-7-87 and 10-8-87 claiming the said relief. But R-1 (the Union Government) refused to entertain the said representations by letter dated 6-4-90 addressed to the State Government on the ground of laches in view of the delay of more than four years in making the representations as against the seniority fixed in 1983 and the same was conveyed by R-2 (State Government) to the applicants by memo. dated 29-5-90. Being aggrieved this O.A. was filed.

8. The two-fold ^{contentions} ~~pleas~~ for R-4 to R-6 are: (i) R-1 rightly refused to consider the belated representations of the applicants and (ii) it is open to the State Government to promote the direct recruits to senior time scale even before they completed five years of service and the letter dated 24-9-73 of the Central Government does not control the Rule 6-A(2) of the

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for the applicants concerned and they were duly meant *intended* to be sent to them for information and necessary action thereon (vide para 17 of the reply dated 22-3-91).

In the rejoinder filed for the applicants it was alleged that it is not even the case of the official respondents that the orders of March 1983 were communicated to them.

12. But in the reply of R-4 to R-6 it was stated ^{list} that the Gradation/ was communicated to all the IFS officers in the A.P.State cadre by proceedings Rc.No.20905783-M4 dated 3-5-83 of the Chief Conservator of Forests and even the applicants herein who were respondents 3, 5, 6 and 7 respective ^{by OA 611/86} alleged to the said effect in the counter filed by them. The said O.A. was filed by the direct recruits to the IFS allotted to A.P.State by alleging that the applicants herein shouldnot have been assigned 1976 as the year of allotment for they were not in continuous officiation from 10-12-79 till they were regularly promoted for there was a reversion on 10-11-79 while their regular promotion was in 1981. It was pleaded inter alia in OA 611/86 by the applicants herein that the said O.A. had to be dismissed as being barred by laches for the challenge to the seniority list was after more than three years. The said plea ~~was~~ ^{accepted} ~~found favour~~ with this Hyderabad Bench and the O.A. 611/86 was dismissed on that ground.

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10. Thus, the two points for consideration are:

(i) Whether the direct recruits to IFS can be promoted to the senior scale on regular basis even before they complete five years of service and ^{if not} whether the date of continuous officiation of the direct recruits in the senior time scale, in case they were promoted to the senior time scale before expiry of five years or the date on which the period of five years expires, has to be taken as date of commencement of officiation of direct recruits for consideration of the assignment of year of allotment to promotees under Rule 3(2)(c) of I.F.S. (Regulation of Seniority) Rules.

(ii) Whether the Central Government was justified in not entertaining the representations dated 3-7-87 and 10-8-87 of the applicants praying for assignment of 1974 as the year of allotment to them and consequential fixation of their seniority above R-4 on the ground of laches.

11. We advert to the second point first. The applicants pleaded that they came to know from reference No.47063/85-M dated 6-5-87 of the Principal Chief Conservator of Forests that they were assigned 1976 as the year of allotment and then they realised that 1974 should have been assigned as year of allotment to them and accordingly their representations dated 3-7-87 and 10-8-87 were submitted. In the reply of R-1 it was stated that the year of allotment of the applicants was referred to in the orders issued in March 1983 meant

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13. It is, thus, evident that even in 1983 itself the applicants knew that they were placed below R-6. It cannot be stated that the applicants could not know that R-6, a direct recruit, was assigned 1976 as the year of allotment. As the IFS officers of the senior cadre of later year of allotment are juniors to the officers of the senior cadre of earlier year of allotment, the applicants ^{could} ~~may~~ have challenged the gradation list communicated by proceedings dated 14-5-83 on the ground that they should ~~not~~ have been assigned 1974 as the year of allotment if they are so advised. But in any case in view of their ^{submission} ~~plea~~ in OA 611/86 the plea in this O.A. that they came to know of it only in 1987 cannot be believed. The learned counsel for the respondents referred to 1976(1) SLR 53(SC) (P.S. Sadasivaswamy Vs. State of Tamilnadu), 1993(25) ATC 242(SC) (Prafulla Kumar Swain Vs. Prakash Chandra Misra & Ors.) and ATR 1993(1) SC 124 (S.B. Dogra Vs. State of H.P. & Ors.) to support their plea that stale case can be rejected. In Sadasiva Swamy's case when there was delay of more than one year in challenging the supersession for promotion, the Supreme Court refused to exercise discretion by observing that normally writ has to be filed at least within six months or at the most in a year. In Prafulla Kumar Swain's ^{case} ~~2~~ the relief was refused when the seniority list published in 1985 was challenged in 1988 on the ground of laches and delay. In Dogra's case when writ petition was filed in 1983 challenging the tentative seniority list supplied in 1977, the interference ~~is~~ in the seniority list after a gap of several years was held as not justified and the restoration of original seniority list was ordered.

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Rule 10 of the Recruitment Rules was incorporated vide MHA Notification No.2/6/64-AIS(IV) dated 1-9-66 and it reads asunder:

"10. Interpretation:- If any question arises as to the interpretation of these rules, the same shall be decided by the Central Government."

Rules 6-A (1), (2) and 3(b) of the Recruitment Rules to the extent to which they are relevant read as under:

"6-A. Appointment of officers in the junior time scale of pay to posts in the senior time scale of pay:-

(1) Appointments of officers recruited to the Service under clause (a) or clause (aa) of sub-rule (2) of rule 4 to posts in the senior time scale of pay shall be made by the State Government concerned.

/(emphasis supplied) (2) An officer, referred to in sub-rule (1) shall be appointed to a post in the Senior time-scale of pay if, having regard to his length of service and experience, the State Government is satisfied that he is suitable for appointment to a post in the senior time-scale of pay.

xxx

xxx

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(3) Notwithstanding anything contained in sub-rule (2) the State Government may--

(a) xxx

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(b) appoint an officer, referred to in sub-rule (1) at any time to a post in the senior time-scale of pay as a purely temporary or local arrangement. "

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When they succeeded on the basis of the said plea in OA 611/86, we feel that there is no equity on the part of the applicants herein in claiming that their representatives^{ours} should have been entertained inspite of the delay.// It was next urged for the applicants that when it is for the Government of India to consider the representations of the applicants, it is not open to R-2, the State Government, to reject the representations on the ground of laches. But even the impugned memo. dated 29-5-90 issued by R-2 refers to the letter dated 6-4-90 of Govt. of India. In view of the contentions raised for the applicants the R-2 produced the letter dated 6-4-90 of Govt. of India, as per our directions, and we perused the same. It is clear therefrom that it is the Government of India which decided to reject the representations on the ground of laches. So this point is held against the applicants.

16. In view of our finding on the ground of laches this O.A. is liable to be dismissed. But as arguments were advanced at length in regard to the effect of letter dated 24-9-73 of the Central Government with reference to Rule 6-A of the Recruitment Rules, we ^{intend} ~~want~~ to express our views with regard to the contentions raised, in regard to the same. Indian Forest Service is an all-India service. I.F.S. (Recruitment) Rules, 1966 were made by the Central Government in exercise of the powers conferred by Section 3(1) of the All India Services Act, 1951, after consultations with the Governments of the States concerned.

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and they have to be followed if they are not inconsistent with any of the statutory provisions. But the plea for the applicants that when Rule 6-A(2) is susceptible of more than one meaning, the same is interpreted by the letter dated 24-9-73 by the Central Government and cannot be held as untenable. To illustrate that, if the statute fixes four years requisite period, then any executive instruction limiting that period or increasing that period has to be held as inconsistent and the same cannot be held as valid. But when the statute does not fix the period and when it is left to the discretion of the executive, it is open to the executive to issue separate instructions for fixing the period so as to have uniformity. Of course Rule 6-A(2) empowers the State Government to promote a direct recruit to the senior time scale after taking into consideration the length of service and experience. But it is an All-India Service. The power was specifically retained by the Central Government under Rule 10 while making the recruitment rules to interpret whenever a question of interpretation of these rules arises. The Central Government held that in order to have uniformity it is proper to fix a time referred to in Rule 6-A(2) instead of leaving it to the executive of various states. The Central Government stepped in when it had become necessary to interpret Rule 6-A(2).

17. We would have referred the matter to the Full Bench as this Hyderabad Bench held in order dated 16-2-89 in TA 108/86 that the letter dated 24-9-73 is in the nature of controlling Rule 6-A(2) of the

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The rule 's not specific as to whether length of service and experience should be during probation or after probation. Thus, it is a matter for interpretation. While making the Recruitment Rules 1966, the power was retained with the Government of India for the right to interpret any of the rules if the same arises. Then can it be stated that there is no force in the contention ^{for} of the ~~Government~~ ^{applicants} that the letter dated 24-9-73 was issued by the Central Government in exercise of the power under Rule 10 of the Recruitment Rules when Rule 6-A(2) can be interpreted in more than one way in regard to length of service and experience and when it is an All-India Service the various States may interpret in their own way. In fact it is stated for the applicants that Tamilnadu State strictly followed the letter dated 24-9-73 of the Central Government and they are not considering the direct recruits for promotion to senior time scale till they complete five years of service (now reduced to four years). It is true that executive instructions cannot control or regulate a statutory provision. Thus if there is any inconsistency between an executive instruction and a statutory provision, the latter prevails. But if the statutory provision is silent in regard to any particular matter, it is well settled that it is open to the executive to issue instructions in regard to the same

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Recruitment Rules which we respectfully feel need re-consideration, but for the fact that this O.A. has to be dismissed on the ground of laches.

18. While it was stated for the applicants that their case should have been considered in 1977 itself and they were prejudiced as the committee met only in 1978 instead of 1977, it is contended for the respondents that Rule 9 of the Recruitment Rules had not fixed any quota for the promotees to the IFS and it merely fixed upper limit in regard to the promotees to IFS and hence they cannot claim seniority by treating that they were promoted in pursuance of selections made in 1977. We feel that in the view which we had taken in regard to laches there is no need to consider as to whether the grounds on which the committee did not meet in any particular year or the grounds on which the promotees were not recruited to IFS even though their quota was less than 33 1/3rd per cent are subject to judicial review and it is left open for consideration as and when it arises. In view of our finding on the point in regard to laches, this O.A. is dismissed. No costs.

CERTIFIED TO BE TRUE COPY

Date..... 10/12/83

Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

To

1. The Secretary, Dept. of Environment Forest Wild Life Ministry of Environment Forests & Wild Life, Paryavaran Bhavan, C.G.C. Complex, Lodi Road, Govt. of India, New Delhi.
2. The Principal Secretary, Energy, Forests Environment, Science and Technology, Govt. of A.P. Secretariat, Hyderabad.
3. The Secretary, Union Public Service Commission, New Delhi.
4. One copy to Mr. M.R.K. Choudary, Advocate, 6-3-600/A 5 Erram Manzil Hyderabad.
5. One copy to Mr. K.V. Ramana, Adml. CGSC. CAT. Hyd.
6. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for A.P. Govt. CAT. Hyd.
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