

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

D.A. 207/91.

Dt. of Decision : 16-9-94.

1. Sri S.Lakshminarayana
2. Sri V.V.Satyanarayana
3. Sri K.Satya Raju

.. Applicants.

Vs

1. Principal Secretary to Government (Pol)  
General Administration Department,  
Government of Andhra Pradesh, Hyderabad.
2. Secretary to Government of India,  
Ministry of Personnel, Public Grievances  
and Pensions, Dept. of Personnel &  
Ex Training, New Delhi. .. Respondents.

Counsel for the Applicants : Mr. J.Venugopala Rao

Counsel for the Respondents : Mr. N.R.Devaraj, Sr.CGSC.(R-2)  
Mr. D.Panduranga Reddy, Spl.  
counsel for A.P. (R-1)

CORAM:

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

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

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DA.207/91

Judgement

( As per Hon. Mr. Justice V. Neeladri Rao, V.C. )

Heard Sri J. Venugopala Rao, learned counsel for the applicant and Sri N.R. Devaraj, learned counsel for R-2 and Sri D. Panduranga Reddy, learned counsel for R-1.

2. The three applicants were promoted to the IAS. The first applicant was promoted to IAS and appointed on 22-11-1978 while the applicant 2 & 3 were promoted to the IAS and appointed to the said post on 17-7-1981. The year of allotment for these three applicants is 1974. By GO Rt. No.810 dated 7-3-1987 all these three applicants alongwith some others were promoted to Selection Grade with effect from 1-1-1987(Annexure-1). IAS (Pay) Rules, 1954 were amended by Notification No.11030/7/87 AIS(II) dated 13-3-1987. As per the said amendment, the first day of July of relevant year shall be reckoned for the purpose of computing four years; nine years or 13 years of eligibility for promotion to Senior Time Scale, Junior Administrative Grade and Selection Grade respectively. By para-6 of letter dated 31-3-1987, it was clarified that the said amendment dated 13-3-1987 is not applicable in regard to the promotions made prior to 13-3-1987. But by letter dated 16-10-1987 vide No. 11030/64/87-AIS(II) of Ministry of Personnel, Public Grievances and Pensions, it is stated that the period of   
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service in the promotion post from 1-1-1987 to 30-7-~~1987~~ does not count for the purpose of increment. Basing on the same the first increment in the Selection Grade is granted to the applicants on 1-7-1988. Being aggrieved, this OA was filed.

3. An employee drawing pay in the ~~Time~~<sup>Pay</sup> Scale is entitled to <sup>annual</sup> increment on completion of one year of service in the grade. FR 26 prescribes conditions on which service counts for increment in Time Scale. FR 24 lays down that an increment shall ordinarily <sup>be</sup> drawn as matter of course, but the same can be withheld if the conduct of the employee has not been good or his work has not been satisfactory. As the applicants were promoted to Selection Grade with effect from 1-1-1986-1987 they are entitled to the first increment in the Selection grade on 1-1-1988. The statutory process cannot be amended or modified by executive instructions. The letter dated 16-10-1987 is inconsistent with the relevant FRs and hence the same cannot be relied upon for excluding the period <sup>upto</sup> ~~from~~ 1-7-1987, urged the learned counsel for the applicants.

4. But it is urged for the respondents as under :

As the applicants had not completed 13 years of service in the IAS by 1-1-1987, they were not eligible for promotion to Selection Grade with effect from 1-1-1987. They would have completed 13 years of service

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instructions contained in letter No.20019/1/75-AIS(ii) dated 17-1-1975. Para 2 therein is relevant and it reads as under :

"2. An officer enters the 14th year of service on completing 13 years of service calculated from the year of allotment assigned to him. To illustrate the point, an officer, whose year of allotment is 1960, enters the 14th year of service, in the year 1973. This officer will, therefore, be eligible for appointment to the selection grade of the Indian Administrative Service at any time in the year 1973."  
(Emphasis is supplied)

7. It is evident from the above that the promotion to the Selection Grade may be at any time in the year in which he completes 13 years of service calculated from the year of allotment assigned to him. In the said para an illustration is given - if the year of allotment is 1960, the officer completes 13 years and enters into 14th year in 1973. As it is only a case of allotment of the year, without reference to the date or month, and when it is a case of reckoning date from the year of allotment, it can be considered that the date of commencement for reckoning the period of 13 years can be from 1st January of the year of allotment. Further, it is also stated therein that the promotion can be given at any time in the year in which the officer completed 13 years of service and entered into 14th year of service. Thereby also it ~~was~~ has been interpreted that promotion can be given even before the completion of 13 years but the said promotion cannot be in any year earlier to the year in which the officer completes 13th year of service. The year referred to

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only after 1-7-1987. Hence their regular promotions could have been subsequent to 1-7-1987 and as such the IAS (Pay) Rules as amended on 13-3-1987 is applicable in regard to the applicants, ~~as such~~ <sup>Hence</sup> they are entitled to the first increment in the Selection Grade as on 1-7-1988 only.

*Further for respondents*  
 5. It is contended that even assuming that the promotions of the applicants with effect from 1-1-1987 are valid, in order to have a uniformity, the Government of India instructed as per letter dated 16-10-1987 that the period prior to 1-7-1987 does not count for increment, and on that basis also the action of the respondents in granting increment to the applicants as on 1-7-1988 cannot be held as illegal. In any case as the letter dated 16-7-1987 was not challenged for the applicants and as the sanction of the increment to the applicants is in accordance with letter dated 16-7-1987 the claim for the applicant that they are entitled for increment from 1-1-1988 has to be negatived is the last condition for the respondents.

*JK*  
 6. Even in para-6 letter dated 31-3-1987 which makes it clear that the amendment as per the notification dated 13-3-1987 is prospective, the date of the GO Rt. on the basis <sup>of</sup> *JK* which the applicants were promoted to Selection Grade with effect from 1-1-1987, is 7-3-1987, and thus prior to 13-3-1987 the date of amendment. As the said amendment is prospective, the case of the applicants have to be considered on the basis of the *X*

therein is the calendar year. The amendment as per notification dated 13-3-1987 is not applicable to the applicants as they were promoted as per proceedings dated 7-3-1987. Their promotion with effect from 1-1-1987 cannot be held as improper for they completed 13 years of service in the IAS in 1987, and as per the 1975 instructions, the promotion can be given at any time in the relevant year i.e. 1987 in this case. So it has to be held that they are entitled to increment as per the relevant FRs.

8. The Fundamental Rules came into force from 1-1-1922. They were continued even after the commencement of the Constitution. They are statutory provisions. They can be amended or modified or altered in exercise of power under Article 309 of the Constitution. Any executive instruction which is inconsistent to the statutory provisions cannot be held as valid. It is not the case of the respondents that the letter dated 16-10-1987 was issued in exercise of power under Article 309 of the Constitution. Hence, the same cannot be treated as modification of FRs.

9. Even FR 24 says that any increment may be withheld from the Government servant by the ~~by the~~ Central Government or by any authority to whom Central Government may delegate power under Rule-6; but withholding can be only on the grounds that the conduct of the officer has not been good or his work has not been satisfactory. It is not even the case of the respondents that the increment for the period prior to 1-7-1988 is withheld as per FR 24. The periods which count for increment are referred to in FR 26. It is not the case of respondents that period <sup>as per</sup> excluded

To

1. The Principal Secretary to Government(Poll)  
General Administration Dept., Govt.of A.P.,  
Hyderabad.
2. The Secretary to Govt.of India,  
Ministry of Personnel, Public Grievances and Pensions,  
Dept.of Personnel & Training, New Delhi.
3. One copy to Mr.J.Venugopala Rao, Advocate, CAT Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
5. One copy to Mr.D.Panduranga Reddy, Spl.Counsel for A.P.Govt.  
CAT.Hyd.
6. <sup>3 copies</sup> One copy to Library, CAT.Hyd.
7. One spare copy.

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letter dated 16-10-1987 comes within the periods which do not count for increment as per FR 26.

10. It is true that it is not specifically pleaded in the OA that the letter dated 16-10-1987 is not valid as it is merely an executive instruction and it is inconsistent with FR. During the course of arguments it is stated for the applicants that they could not come out with that plea as they were not aware of the letter dated 16-10-1987 by the date this OA was filed. But when the same is referred to in the reply statement filed by the respondents, the applicants should have come up with an amendment.

11. But as this is an OA filed in 1991 i.e. about three years back and as the plea is the question of law, it is just and proper to advert to the same in disposing the OA instead of further ~~dealing~~ <sup>disposing</sup> the matter by giving an opportunity to the applicants to come up with an amendment. Hence, we had adverted to the same, even though there is no specific plea to the effect that letter dated 16-10-1987 is not valid as it is only executive instruction and as it is inconsistent with the statutory rules.

12. In the result, we find that the applicants are entitled to the first increment as on 1-1-1988 in the Selection Grade. The arrears if any on that basis have to be paid to the applicants./

13. The OA is ordered accordingly. No costs./

*mantri*  
( A.B. Gorathi)  
Member (Admn.)

*Neeladri*  
(V. Neeladri Rao)  
Vice Chairman

Dated : September 16, 94  
Dictated in Open Court

*My 16/94*  
Deputy Registrar (S)

*Typos* 7  
TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

*Roneo 28/9/94*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

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

AND

*A. B. Grothi*  
THE HON'BLE MR. R. RANGARAJAN : M. (L.L.B.)

DATED: 16.9.1994

ORDER/JUDGMENT

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

in  
O.A.No. 207/91.

(T.A.No. ) (W.P.NO )

Admitted and Interim directions  
Issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn *No SP*

Dismissed for Default.

Ordered/Rejected

No order as to costs.

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