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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 55/91.

Dt. of Decision : 6-10-94.

Sri G. Narendranath

.. Applicant.

vs

1. Union of India rep. by its Secretary, Department of Personnel and Training, Administrative Reforms and Public Services, New Delhi.
2. Union Public Service Commission rep. by its Secretary, Dholpur House, New Delhi.
3. The State of AP rep. by its Chief Secretary@ to Government (G.A.D.) (Sec) Department, Secretariat Buildings, Hyderabad.
4. T. Vijaya Kumar
5. L.V. Subramanyam
6. Shekar Prasad Singh
7. M.G. Gopal
8. B.P. Acharya
9. Randeep Sudan
10. Dinesh Kumar
11. Binoy Kumar
12. Ajeya Kallam
13. Bhanwarlal
14. Vinod Kumar
15. T. Radha
16. P. Subramanyam
17. Busi Sam Bob
18. Smt. Rajeev R. Acharya
19. Smt. Preeti Sudan

.. Respondents.

Counsel for the Applicant : Mr. Y. Suryanarayana

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGSC. (R-1&2)
Mr. D. Panduranga Reddy, SC for A.P. (R-3)
Mr. D.V. Seetharama Murthy for R- 4, 5, 7, 8, 9, 10, 11, 13, 15, 16, 18 & 19.

CORAM:

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

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

[AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN]

JUDGEMENT

Heard Shri Y. Suryanarayana, learned counsel for the applicant and also Shri N.R. Devaraj, Sr. Standing counsel for the Central Government, Shri D. Panduranga Reddy, Standing counsel for the State Government and Shri D.V. Seetharama Murthy, learned counsel for Respondents 5, 4, 7, 8, 9, 10, 11, 13, 15, 16, 18 & 19.

2. This OA was filed praying for quashing Memo. No. 2422/Spl.A/90-1 dated 14-12-90 and for consequential direction to Respondents 1&2 to determine 1982 as the year of allotment of the applicant and to place his name immediately below Sri K. Pradeep Chandra, ~~the last of the~~ direct recruit belonging to 1982 batch.

3. The facts which are not in controversy are as under:-

The applicant was included at sl. No.9 in the select list dated 21-2-87 prepared for the promotee officers of A.P. State ⁶ into I.A.S. The applicant was posted to the cadre post on 25-2-87 and he continued in the said post till 22-9-87. The said officiating appointment of the applicant was terminated with effect from 23-9-87 on the basis of the wireless message dated 8-9-87 issued by the Central Government. The applicant was again appointed to the said post from 1-10-87

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(LPC)

and he continued in the said post from 11-12-87
the date on which he was promoted to I.A.S.

4. If the officiating service of the applicant from 25-2-87 has to be reckoned, he has to be given 1982 as the year of allotment in view of the extant rules as by then the junior most direct recruit who was officiating in the Senior scale post was of 1982. But if the officiating service of the applicant has to be reckoned from 1-10-87 then the year of allotment will be 1983 as by then the junior most direct recruit who was officiating in the senior scale is of 1983 batch. It is urged for the applicant that the artificial break was given to the applicant from 23-9-87 till 30-9-87 so as to deprive him the benefit of earlier year of allotment.

5. It is submitted for the Respondents that Shri D. Chakrapani, a promotee officer to the I.A.S. from the A.P. State Government was having ~~Rank~~ ^{Rank} ~~tanking~~ higher to the rank of the applicant as per select list dated 21-2-87, and as Shri Chakrapani was given 1983 as the year of allotment in accordance with the rules, the applicant cannot claim earlier year of allotment on the basis of the officiating service prior to the appointment even assuming that the break in service from 23-9-87 to 30-9-87 is ignored, in view of Rule (3)(4)(e) of I.A.S. Regulation of seniority rules, 1987 which came into effect from 6-11-1987.

6. It is next urged for the Respondents that proviso ^{is L.W.} ~~9(2) & 9(3)~~ of I.A.S. Cadre Rules envisages that a non-select officer or a select officer who is not next in order in the select list, shall be appointed to a cadre post only with the prior concurrence of the Central Government, and when

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it was brought to the notice of the Central Government that the appointment of the applicant in the cadre post from 25-2-87 is in violation of the said proviso, instructions were given to the State ^{under Rule 9(3) Cadre Rules,} Government to terminate the officiating appointment of the applicant and hence the said termination is in accordance with rules and as such, the officiating service upto and prior to 22-9-87 cannot be reckoned for the purpose of determination of the year of allotment of the applicant. Before the rule was sub-rule (ii) amended on 18-1-88, the rule (3) (3) of Seniority rules for determining the year of allotment in regard to an officer promoted from Civil Services of the State Government is as under:

" the year of allotment of a promotee officer shall be the same as the year of allotment of the junior most among the direct recruit officers who officiated continuously in a senior post from a date earlier to the date of appointment of the promotee officer to the Service."

But the said rule was governed by Rule 3(4) of IAS (Regulation of Seniority) Rules, 1987 and to the extent it is relevant for disposal of this OA is as under:-

Notwithstanding anything contained in clause (ii) of sub-rule 3(3), if a promotee officer officiated continuously in a senior post in accordance with the provisions of Rule 9 of the Cadre Rules, he may be assigned the year of allotment of the junior most direct recruit officer who was appointed to officiate in a senior post from a date earlier to the date of commencement of such officiation of the promotee

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officer subject to the following conditions that --

(a) the name of the promotee officer is included in all the select Lists in force between the date of commencement of his officiation and the date of his appointment to the service.

Provided that where the name of an officer was included in the Select Lists in force immediately before the re-organisation of the States and is also included in Select List prepared subsequent to the date of such re-organisation the name of such officer shall be deemed to have been continuously in the select list with effect from the date of inclusion in the first mentioned Select List.

8. It is manifest that the benefit of Rule 3(4) of Service Rules, 1987 accrues only in regard to the period of continuous officiation. In this case the continuous officiation by the date of appointment after the inclusion in the Select List is only from 1-10-87.

9. Then the question arises as to whether the termination on 22-9-87 of the officiating post in regard to the applicant was for the extraneous reasons.

10. Sub-Rule 9(2) of the IAS (Cadre) Rules 1954 as they stood prior to the amendment of 11-11-87 was as follows:-

"Where in any State a person other than a Cadre officer is appointed to a cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.

Provided that a non-select list officer or a select list officer who is not next in order in the select list, shall be appointed to a cadre post only with the prior concurrence of the Central Government.

11. The above rule makes it clear that an officer who is lower in the rank in the select list cannot be appointed to a cadre post without the concurrence of the Central Government when the senior in the select list is not appointed to a cadre post. When the applicant who was at serial No. 9 in the select list was appointed to officiate in the cadre post by the State Government when his senior Shri Chakrapani was not so appointed and when the Central Government was informed ~~that~~ about it by the

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(Signature)

State Government, the Central Government instructed the State Government by wireless message dated 8-9-87 for terminating officiating appointment of the applicant in the cadre post and ^{hence} accordingly the termination of the officiating appointment of the applicant in regard to cadre post on 22-9-87 is in accordance with the relevant rules and it is not for the extraneous reasons. Hence the break from 23-9-87 to 30-9-87 in the officiating post cannot be ignored.// Further in view of Rule 3(4) (e) of Seniority Rules, 1987 which is as under:

⊗ a date earlier to the date from

" An officer who occupies a lower rank in a Select list shall not be given the benefit of such officiation in a senior post/ex-cadre post from ^{which} such benefits are admissible to an officer who is higher in rank in that Select List".

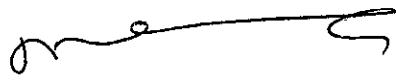
a promotee officer cannot claim the benefit of officiating service under Rule 3(4) of Seniority Rules, 1987 if thereby he is going to get year of allotment earlier to the year of allotment of the senior. Admittedly, Shri D. Chakrapani was having rank higher than the rank of the applicant in the select list dated 21-2-87. The year of allotment ^{Sri Chakrapani,} that was given to the applicant in accordance with Rule 3 of the seniority Rules, 1987 is 1983. Hence if on the basis of the officiation the year of allotment to be given to the applicant comes to 1982, he cannot get that benefit in view of Rule 3(4) (e) of seniority rules. Hence even ^{on} that basis, the applicant is not entitled to 1982 as the year of allotment.

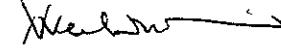
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12. Hence for the reasons stated, it is ~~was~~ ^{be held} concluded that the applicant was rightly given 1983 as the year of allotment and he is not entitled to be given 1982 as the year of allotment as claimed by him and as such, this OA has to be dismissed.

13. Accordingly the OA is dismissed.
No costs. //


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE-CHAIRMAN

Dated the 6th October, 1994
Open court dictation

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Deputy Registrar (J) CC

To

1. The Secretary, Dept. of Personnel and Training, Administrative Reforms and Public Services, Union of India, New Delhi.
2. The Secretary, U.P.S.C. Dholpur House, New Delhi.
3. The Chief Secretary to Govt. (G.A.D.) (Sec.) Dept., State of A.P. Secretariat Buildings, Hyderabad.
4. One copy to Mr. Y. Suryanarayana, Advocate, CAT. Hyd.
5. One copy to Mr. N. R. Devraj, Sr. OGSC CAT. Hyd.
6. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for A.P. Govt. CAT. Hyd.
7. One copy to Mr. D. V. Seetharama Murthy, Advocate, 1-1-561 Gandhinagar, New Bakaram, Hyd.
8. One copy to Library, CAT. Hyd.
9. One spare copy.

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