

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 347/92.

M.Krishna Swamy.

Date of Order: 16-2-95

Applicant.

VS.

1. The Union of India rep. by the Secretary, Department of Personnel and Training, Ministry of Personnel, PG & Pensions, New Delhi.
2. The Govt. of A.P. rep. by its Chief Secretary, General Administration Department, Secretariat, Hyderabad.

Respondents.

Counsel for the Applicant: Mr.C.Srinivasa Baba, Advocate

Counsel for the Respondents: Mr.N.R.Devraj, Ad. CGSC.

Mr.I.V.Radhakrishna Murthy, Spl.Counsel for A.P.

Govt.

CORAM:

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

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

JUDGMENT

(AS PER HON'BLE SRI JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN)

Heard Sri C.Srinivasa Baba, learned counsel for the Applicant, Sri I.V.Radhakrishna Murthy, learned special counsel for R-2 and Sri N.R.Devraj, learned standing counsel for R-1.

2. The applicant was appointed in 1966 as Deputy Registrar of Cooperative Societies in A.P. State on selection from the combined competitive examination conducted by the A.P. Public Service Commission for Group-I Services. He was promoted as Special Grade Deputy Registrar of Cooperative Societies on 21.4.1976. He was promoted as Joint Registrar of Cooperative Societies on 11-1-1982.

3. The applicant alongwith four others was interviewed on 26-12-1988 by the Selection Committee for consideration for selection to Indian Administrative Service for the sole vacancy from the Non-State Civil Services in A.P. State. The applicant was selected by the Selection Committee and his selection was approved by the Union Public Service Commission on 14-2-1989.



6. It is manifest from Rule 3(3)(iii)(c) that the weightage mentioned in Rule 3(3)(iii)(b) shall be calculated with effect from the year in which the officer is appointed to the service. Thus, the year of appointment is the criterion for giving the weightage. As per Rule 3(3)(iii)(b), weightage envisaged in Rule 3(3)(iii)(b) is for the period beyond 12 years. So, it follows that even 12 years referred to in Rule 3(3)(iii)(a) is from the year of appointment.

7. In para 28 of the judgment reported in 1994(26) ATC 192 (Syed Khalid Rizvi and others Vs Union of India) it was observed by the Apex Court as under:

"We find force in the contention of Sri P.P.Rao, that unless promotees were recruited to the Indian Police Service in accordance with the Rules and Regulations, they did not form a class with the Direct Recruits and unequal cannot be treated as equals."

The said submission was made for consideration of the relevant rules of seniority. The seniority is a condition of service. One can claim seniority only on appointment to a particular service. Till one becomes a member of a service, the question of claiming the seniority does not arise. Unless one is appointed to the said service either by way of Direct Recruitment or Promotion or absorption or appointment by way of selection, one would not be a member of the said service. Thus consideration in regard to fixation of seniority arises after one becomes a member of the service. The seniority rules which are in force as on the date of appointment will naturally apply unless the rules specify otherwise. A selectee from Non State Civil Service becomes the Member of IAS only on being appointed to the said service. The appointment of the applicant herein is long after 3-2-1989, the date on which the amended rules in regard to the assignment of the year of allotment had come into effect.

8. Further, in para 23 of the judgment in Syed Khalid Rizvi case it was observed that "moreover the recruitment by selection would give only right to consider according to rules and creates no right to appointment." The appointment can be made only in a vacancy that may exist. In fact, the vacancy for Non State Civil Service candidates in AP state had actually arisen on 30-6-1989 i.e. long after amended seniority rules had come into effect.

"3(3)(iii): The year of allotment of an officer appointed by selection shall be determined in the following manner:

(a) for the first 12 years of gazetted service, he shall be given a weightage of 4 years towards fixation of the year of allotment;

(b) he shall also be given a weightage of one year for every completed 3 years of service beyond the period of 12 years, referred to in sub-clause (a), subject to a maximum weightage of 5 years. In this calculation, fractions are to be ignored;

(c) the weightage mentioned in sub-clause (b) shall be calculated with effect from the year in which the officer is appointed to the service; Provided that he shall not become senior to another non-State Civil Service Officer already appointed in the service;

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

5. The short point which arises for consideration is as to whether the seniority Rule 3(3) (iii) prior to amendment in 1989 or the said rule as amended in 1989 has to be followed for assigning the year of allotment to the applicant.

6. As the applicant was interviewed and selected prior to 3.2.1989, the date on which the amendment had come into effect, the seniority rule prior to the date of amendment has to be applied in assigning the year of allotment to the applicant, urges the learned counsel for the applicant. But the submission for the respondents is that as the applicant is actually appointed to IAS subsequent to the date of amendment, Rule 3(3) (iii) as amended in 1989 is applicable and basing on the same, the year 1982 was assigned to the applicant.

amendment has no bearing and what is the cut off date for satisfying minimum/maximum age was referred to. •

12. In 1989 SCC(L&S) 353 (D.P. Sharma and others vs. Union of India and another) it is held that the seniority rules which are amended subsequent to the date of appointment cannot be given retrospective effect for it would effect the right to seniority which already accrued. It is implicit in the above judgment that right to seniority is on the basis of the rules which were in force on the date of appointment.

13. It was held in 1992(2) CSJ 148 (Dr. P.K. Jaiswal vs. Debi Mukherjee and others) that when once the Government intimates the UPSC that it was examining the question of amending the Recruitment Rules. it is not open to the UPSC to proceed with the selection. The above judgment is also not helpful in considering the point in issue.

14. The learned standing counsel for AP State Government relied upon 1994(6)SCC 151 (State of MP vs. Raghuvir Singh Yadav). Therein it was held that the selection process initiated prior to the amendment can be cancelled and fresh selection can be initiated in accordance with the amended rules. By relying upon the said judgment it was urged that when even selection initiated can be cancelled, the date of initiation of the selection process cannot be held as relevant factor for determining as to whether the seniority rules as on the date of a particular stage of the process is applicable or not. But this decision is also not helpful for considering the point in issue.

15. As already observed, the seniority is a condition of service and unless one becomes a member of service, he cannot claim any right due to such member of service. One can be a member of the service on being substantially appointed to the said service. The appointment of the applicant to IAS was subsequent to 3-2-1989 and thus long after the relevant seniority rule was amended. Further, amended rule 3(iii)(c) suggests that weightage has to be given with reference to the year of appointment. Thus, the year of a appointment is the criterion for assigning the year of allotment.

Thus, even when the vacancy had arisen after the amendment, the contention that the date of interview is the criterion for considering as to whether pre amended or amended seniority rule is applicable is not tenable.

9. The learned counsel for the applicant had referred to Syed Khalid Rizvi case to urge that the rule of seniority in regard to All India Service is closely interlinked with the rules of Recruitment and hence the rules of seniority as in force by the date of initiation of selection had to be followed. But we do not accede to the said contention. The amended rule makes it clear that the weightage had to be given with reference to the year of appointment. The amended rule of seniority is not interlinked with the recruitment rules. Even Rule 3(iii)(iii) of the 1987 Rules which is applicable in regard to an appointee from Non-State Civil Service is not interconnected with the Recruitment Rules. The only limitation is that an year earlier to the allotment of the year to a promotee cannot be allotted if the length of service of that earlier promotee is more than the length of gazetted service of the selectee.

10. Thus, when seniority is a condition of service; and as the seniority rule in regard to a selectee even before 3-2-1989 is not interlinked with the recruitment rules, it is just and proper to hold that the seniority rule which was in force as on the date of appointment of the selectee, has to be made applicable for assigning the year of allotment.

11. Even the various judgments which are referred to for the applicant are not directly on point. It is held in 1990(1)SLR 307 (P.Mahendran and others vs. The State of Karnataka and others) that Recruitment Rules which were in force by the time the proceedings for selection were initiated had to be applied in regard to the qualification prescribed even if the said rule was amended before selection. The principle laid down in 1990(4) SLR 236 (B. Public Service Commissioner & another Vs. B.Sarat Chandra and others) is that the date of selection means the date when the advertisement calling upon the candidates to apply was issued. That principle is applicable for considering as to whether the candidate was between minimum and maximum age. The above two judgments are only in regard to the verification about the qualification and the age which are part of the recruitment process. It was held therein

Further, the vacancy itself had arisen only after 3-2-1989. Hence, in view of the above relevant facts, the contention for respondents that the amended Rule 3(3)(iii) is applicable has to be sustained. The year of allotment assigned to the applicant is in accordance with the said amended rule. Thus there are no merits in this OA and accordingly it has to be dismissed.

16. In the result the OA is dismissed. No costs.

CERTIFIED TO BE TRUE COPY

Dated

Court Officer

Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

24/3/85

To

1. The Secretary, Department of Personnel and Training, Ministry of Personnel, PG & Pensions, New Delhi.
2. The Chief Secretary, General Administration, Dept. Govt. of A.P. Hyderabad.
3. One copy to Mr. C. Srinivasa Baba, Advocate, Plot No. 6 Arora Housing Colony, Road No. 3 Banjara Hills, Hyd-34.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One copy to Mr. I. V. Radhakrishna Murthy, Spl. Counsel for A.P. Govt. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
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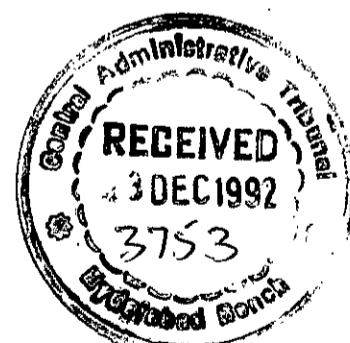
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In the CAT
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MR. 1336 /92
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Q4 347/92

Verified Petition



filed by:-

N. R. Dewari
Sr. C.S.C.

may be filed
on
23/12/92