

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.77 of 1999.& O.A.No.205 of 1999.

O.A.No.77/1999:

DATE OF DECISION: 18-1-2001

Between:

1. K.Madusudan Rao, s/o K.Venkateswarlu,
Working as Joint Collector, Krishna
District, Machilipatnam.

...Applicant

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1. The Union of India, rep. by its
Secretary to Government, Ministry of
Personnel, Public Grievance & Pension,
Department of Personnel & Training,
New Delhi-110 001.
2. The State of Andhra Pradesh rep. by its
Chief Secretary to Government,
General Administration Department,
Secretariat Buildings, Saifabad,
Hyderabad.
3. Sri Rajat Bhargava, IAS
District Collector & Magistrate,
Anantapur.
4. Sri Rajat Kumar, IAS
Deputy Commissioner of Commercial Taxes,
Abids Division, Govt. of A.P.,
Hyderabad.

...Respondents

COUNSEL FOR THE APPLICANT :: Mr.N.Rama Mohan Rao

COUNSEL FOR THE RESPONDENTS :: Mr.B.Narsimha Sharma
(for Central Govt.)

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: Mr.O.Manohar Reddy for R-3

: Mr.V.V.Anil Kumar
(for State of A.P.)

O.A.No.205/1999:

Between:

1. K.Chandramouli, s/o K.P.Krishna Swamy,
Presently working as Joint Collector,
Nellore, r/o Nellore.

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2. K.Lakshminarayana, s/o K.L.Narayanappa,
Working as Deputy Secretary,
Chief Minister's office, Secretariat,
Hyderabad.
3. L.Premchandra Reddy, s/o L.V.Krishna Reddy,
Working as Joint Collector,
Chittoor District, r/o Chittoor.
4. K.Prabhakar Reddy, s/o K.Yellareddy,
Presently working as Joint Collector,
Mahaboobnagar District,
r/o Mahaboobnagar.

...Applicants

a n d

1. The Union of India, represented by
its Secretary to Government,
Ministry of Personnel, Public
Grievance and Pension, Department of
Personnel & Training, New Delhi-110 001.
2. The State of Andhra Pradesh, represented
by its Chief Secretary to Government,
General Administration Department,
Secretariat Buildings, Saifabad, Hyderabad.
3. Sri Rajat Bhargava, IAS,
District Collector & Magistrate,
Anantapur.
4. Sri Rajat Kumar, IAS,
Deputy Commissioner of Commercial Taxes,
Abids Division, Govt. of Andhra Pradesh,
Hyderabad.
5. Sri G.Ashok Kumar, IAS
Officer on Special Duty,
O/o Commissioner of Land Revenue,
Government of Andhra Pradesh,
Nampally Station Road, Hyderabad.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.N.Rama Mohan Rao
COUNSEL FOR THE RESPONDENTS:: Mr.B.Narsimha Sharma
(for Central Government)
: Mr.V.V.Anil Kumar
(for State of A.P.)
: Mr.O.Manohar Reddy for R-3

CORAM:

THE HON'BLE SRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN

THE HON'BLE SRI M.V.NATARAJAN, MEMBER (ADMN.).

:COMMON ORDER:

(PER HON'BLE SRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN)

1. Both the OAs faced common questions of law and the facts are similar. Hence, they are disposed of by this Common Order.
2. Clause (iii) of Sub-Rule 3 of Rule 3 of Indian Administrative Service (Regulation of Seniority) Rules, 1987 as amended by notification dated 3-2-1989, in so far as it adopts the formula of assigning weightage of 4 years for the first 12 years of Gazetted service, is under challenge in both the OAs. The applicants in both the OAs also seek a declaration for the allocation of 1989 as the year of allotment.
3. For the purpose of illustration, the facts in O.A.No.77 of 1999 are as follows:-

While the applicant was working as Joint Commissioner of Commercial Taxes, he was considered for appointment to the IAS from the Non-State Civil Service Officers quota (for short "Non-SCS officers") for the year 1997. Out of the two vacancies for the Non-SCS officers quota the applicant was selected and approved, and was appointed to the IAS in 1997. He was thereupon posted as Joint Collector (Trainee) in Medak District and after completion of the training he was posted as Joint Collector, Krishna District. In terms of Rule 3(3) (iii) of IAS (Regulation of seniority) Rules, 1987 (for short "Seniority Rules") as amended on 3-2-1989, the applicant was assigned the year of 1991 as the year of allotment.

4. The method of recruitment to IAS is laid down under Rule 4 of the IAS (Recruitment) Rules, 1954. Under this rule the recruitment is from four sources,- 1) by direct recruitment through competitive examination, 2) by selection from the emergency commissioned officers and short service commissioned officers of the Armed Forces commissioned as such on or before 1-11-1962 and before 10-1-1968, 3) by promotion of the members of the State Civil Service, and 4) by selection in special cases

from among the persons who hold in a substantive capacity gazetted post in connection with the affairs of the State and who are not members of the State Civil Service. We are now concerned in this case with Rule 4 of the IAS (Recruitment) Rules dealing with the third and fourth method of the recruitment i.e., by promotion/selection to the service from the State Civil Service and Non-State Civil Service Officers of the State as the applicant was appointed to the IAS by way of selection.

5. The assignment of the 'year of allotment' is provided by the IAS (Regulation of Seniority) Rules, 1987. Clause (iii) of Sub-Rule 3 of Rule 3 of the above Seniority Rules has been amended by notification dated 3-2-1989, to read as under:-

"(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 connection, fractions are to be ignored;

(c) The weightage mentioned in the 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 to 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."

6. The applicant challenges the method of computing the first 12 years of Gazetted service for giving weightage of 4 years towards fixation of the year of allotment. It is his contention that the period of 12 years of gazetted service is too longer a period to be reckoned for assigning the year of allotment and the formula should be on the basis of computation of the first 8 years. By virtue of application of the 12 years period in his case the applicant had suffered an invidious discrimination which resulted in loss of two years advantage in the matter of assignment of year of allotment. It is submitted that the 12 years' period was adopted for the purpose of eligibility for selection of Non-State Civil Service Officers quota for induction into service and when it was agitated as discriminatory before the Supreme Court, the Supreme Court struck down the 12 years' period and thereupon 8 years' period was fixed, vide T.SHYAM BHATT v. UNION OF INDIA & OTHERS (1994 Supp. (3) SCC 340). It is therefore contended by the learned Counsel for the Applicant that when 8 years formula was now adopted for the purpose of eligibility criteria for selection in respect of the Non-State Civil Service Officers quota, there could be no good reason for not adopting the same formula for assignment of year of allotment. Hence, it is contended that Clause (iii) of Sub-Rule 3 conflicts with the IAS (Appointment by selection) Regulations as amended in 1989.

7. Respondent No.1 filed the counter and contested the case maintaining that the impugned rule is valid and is not either discriminatory or arbitrary. The fixation of the period of 8 years for eligibility for induction into the IAS under the IAS (Appointment by selection) Regulations, 1956 cannot have any relationship with the period fixed for assigning the year of allotment in the IAS (Regulation of Seniority) Rules as they contemplate two different and distinct situations. The impugned rule is statutory and unless it is violative of Article 14 or 16 of the Constitution of India, the same cannot be interfered with by the Tribunal on any other considerations. The respondents also submit that the striking down of Rule of amendment dated 30-3-1989 to the IAS (Appointment by Selection) Regulations, 1956 by the Supreme Court in T.SHYAM BHATT v. UNION OF INDIA (1994 Supp.(3) SCC 340) will not have any adverse effect upon the validity of the impugned rule. The Supreme Court have not adversely commented upon the validity of the regulation of seniority rules in the above case. Hence, the decision in T.SHYAM BHATT's case was relied upon only to confuse the issue. The applicant's seniority has been correctly fixed and the year of allotment was rightly assigned as 1991 in accordance with the rules.

8. Counsel for the Respondents 2 and 3 also contested the case advancing same arguments.

9. We have given careful consideration to the contentions advanced by the learned Counsel on either side.

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10. As seen supra the method of recruitment to IAS is governed by IAS(Recruitment) Rules and the method of fixation of seniority of an IAS officer is laid down in the IAS(Regulation of Seniority) Rules. Out of the four methods of recruitment, the last one is by way of selection of Non-SCS officers and is governed by the IAS (Appointment by Selection) Regulations, 1956. As per unamended Clause (ii) of sub-regulation (1) of Regulation 3 of the ~~IAS of the above~~ ^{IAS (Appointment by Selection)} regulations, a non-State Civil Service Class-I officer has to complete 8 years of continuous service in a gazetted post involving duties comparable to Class-I officer in gazetted post of State Civil Service to be eligible for selection to the IAS.

11. The above Clause was amended on 30-3-1989 by the IAS Second Amendment Regulations enabling the non-State Civil Service Class II officers along-with Class I Non-SCS officers who had completed 12 years of continuous service in substantive gazetted post to be eligible for selection to the IAS. This amendment was challenged by a Karnataka Class I officer on the ground that the pooling of non-State Civil Service Class-I officers and non-State Civil Service Class-II and treating them in the same Class to make all of them eligible for selection to IAS ex-facie inhibits Articles 14 and 16 of the Constitution. The Supreme Court in T.SHAM BHAT v. UNION OF INDIA & ANOTHER case (reported in 1994 Supp(3) SCC 340) held that the said amendment was unjust and arbitrary and violative of the Article 14 of the Constitution and the same was struck down. Placing heavy reliance upon the Judgment of the Supreme Court in striking down the increase of eligibility for selection from 8 years to 12 years, the learned Counsel for the Applicant

contends that the fixing of the period of 12 years in Clause (iii) of Sub-Rule 3 of the Regulation of Seniority Rules, 1987 for the purpose of fixation of year of allotment should equally to be held as illegal and has to be struck down. We are not persuaded to accept this contention. The seniority of an IAS officer is referred to as the year of allotment. For a direct recruit officer it is as per Clause (1) of Sub-Rule (3) and it shall be the year following the year in which the competitive examinations were held. Sub-Rule (3) of Rule (3) of the Regulation of Seniority Rules speaks of how the year of allotment has to be assigned for a promotee officer as well as an officer appointed by selection. Sub-Rule (3) (3) (ii) speaks of year of allotment of a promotee officer and the operative portion of the rule is extracted hereunder:-

- "(a) for the service rendered by him in the State Civil Service upto twelve years, in the rank not below that of a Deputy Collector or equivalent, he shall be given a weightage of four years towards fixation of the year of allotment;
- (b) he shall also be given a weightage to one year for every completed three years of service beyond the period of twelve years, referred to in sub-clause (a), subject to a maximum weightage of five years. In the calculation fractions are to be ignored;"

12. Clause (iii) of Sub-Rule 3 which provides for year of allotment to an officer appointed by Selection has already been extracted supra in paragraph 5. From a perusal of Clause (ii) and Clause (iii) it clearly shows that for promotee officers as well as for officer appointed by selection for the

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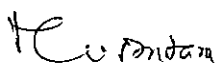
same period of 12 years of gazetted service, a weightage of 4 years is allowed. Thus, the mode of fixing 12 years for the purpose of giving weightage of 4 years cannot be faulted for any discrimination under Article 14 or 16 of the Constitution of India. It should be noted that the rules are statutory in nature having been framed under Article 309 of the Constitution of India. Unless it is shown that the rule infringes Article 14 or 16 of the Constitution, it is not permissible for this Tribunal to interfere with the same, though, it has caused hardship for one or the other officer.

13. Placing reliance on T.SHAM BHAT's case is wholly misplaced. What was found fault by the Supreme Court in that case was the pooling of Clause II and I officers of Non-State Civil Service for the purpose of eligibility for selection, on the completion of 12 years. The said equivalence was found unconstitutional. The raising of 12 years from 8 years itself was not per se held as arbitrary or discriminatory. Hence, the fixation of period of 12 years for computation of year of allotment cannot be faulted.

14. Another ground was raised in the OA, and that is, the applicant having been appointed directly as a Commercial Tax Officer and promoted as Deputy Commissioner (Commercial Taxes) in 1989 and as Joint Commissioner (Commercial Taxes) in 1994 and thus for 8 years prior to the selection to IAS he was holding the equivalent post liable to be held by the cadre officers, the Government is bound to take into account the fact that he was holding the post equivalent to cadre post in the State Service and appropriate credit should be provided therefor at the time of determining the year of allotment. This

point was not raised by the applicant in his arguments. He, however, raised this in reply and as the respondents had no occasion to rebut the same, it is not possible for us to consider this ground. It is however to be noted that the allotment of the year of allotment is governed by the statutory rules, namely IAS (Regulation of Seniority) Rules and accordingly the year of allotment has to be assigned. No other factors could be taken into consideration. The main contention, which has been pressed into service by the learned Counsel for the Applicant is as to the validity of the Clause(iii) of Sub-Rule(3) of Rule 3 of the above rules and as we find no merit in this contention, the OAs are liable to be dismissed.

15. Both the OAs are therefore dismissed with no order as to costs.


(M.V. NATARAJAN)
MEMBER (A)


(V. RAJAGOPALA REDDY)
VICE CHAIRMAN

DATED: this the 18th day of January, 2001

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