

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 17.11.2000

OA No.14/1995

1. Rajasthan Administrative Services Association through its General Secretary Shri Shree Ram Meena s/o late Shri Jagan Prasad Meena, presently working as Additional Director, Social Welfare Department, Jaipur.
2. M.L.Gupta s/c Shri Banwari Lal Gupta, presently working as Deputy Secretary to Hon'ble Chief Minister, Govt. of Rajasthan, Jaipur.
3. Ashutosh Gupta s/o Shri Chiranjil Lal, presently working as Deputy Secretary, Election Department, Jaipur.

.. Applicants

Versus

1. Union of India through the Secretary, Department of Personnel and Training, Ministry of Public Grievances and Pension, Government of India, New Delhi.
2. The State of Rajasthan through the Chief Secretary to the Govt. of Rajasthan, Jaipur.
3. Union Public Service Commission, Dholpur House, New Delhi through its Secretary.

.. Respondents

Mr.Vinit Pareek, proxy counsel to Mr. Ajay Rastogi, counsel for the applicants

Mr. U.D.Sharma, counsel for respondent No.1

CORAM:

Hon'ble Mr. Justice B.S.Paikote, Vice Chairman
Hon'ble Mr. H.P.Hawani, Administrative Member

Order

Per Hon'ble Mr. H.P.Hawani, Administrative Member

In this application filed under Section 19 of the Administrative Tribunals Act, the applicants have prayed that the



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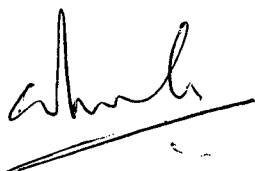
respondents may be directed to include in the cadre constituted under Rule 3/4 of the Cadre Rules, 1954 the posts mentioned in Schedule-B which are being continued for a period of more than 3 years and are in existence for indefinite period and after such inclusion, the respondents be directed to fill 1/3 of the posts in accordance with Indian Administrative Service (Appointment by Promotion) Regulations, 1955 with all consequential benefits.

2. After hearing the rival contentions, it appears that the issue to be resolved by us is whether this Tribunal can give a direction to the Central Government to consider and take a decision regarding the inclusion of posts in Schedule-B in the IAS Cadre of Rajasthan State or else direct the State Government to abolish the posts which cannot be included in the Cadre.

3. It has been argued by the learned counsel for the applicant Association that the posts mentioned in Schedule-B have been continuing for a long time and it is, therefore, clear that these posts are required to be encadred in the IAS Cadre of Rajasthan State. He has drawn our attention to Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954 (for short Cadre Rules). It will be useful to extract the said Rule as under :-

"4.Strength of Cadres. 4(1) The strength and composition of each of the cadres constituted under rule 3 shall be determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made, shall be as in force immediately before the commencement of these rules.

4(2) The Central Government shall, at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations



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therein as it deem fit.

Provided that nothing in this sub-rule shall be deemed to effect the power of the Central Government to alter the strength and composition of any cadre at any other time.

Provided further that the State Government concerned may add for a period not exceeding one year [and with the approval of the Central Government for a further period not exceeding two years] to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."

The contention of the learned counsel for the applicant Association is that the strength and composition of the Cadre of the State is determined by the Central Government in consultation with the State Government and the Central Government is required to re-examine the strength and composition of each such cadre in consultation with the State Government every 5 years. It is stated that as per an amendment 3 years has been substituted by 5 years. It is further contended that as per the second proviso under Rule 4, the State Government can add for a period not exceeding one year and with the approval of the Central Government for a further period not exceeding two years to a State Cadre one or more posts carrying duties and responsibilities of like nature to the Cadre post. It has been forcefully argued that in view of the above stated rule position, the posts mentioned in Schedule-B, which are required for managing the affairs of the State Government and are, therefore, being continued for long period, should either be encadred and if some of these cannot be encadred, these have to be necessarily abolished.

4. It has been argued with equal force by the learned counsel for the respondents that ~~as~~ the last cadre review was held on



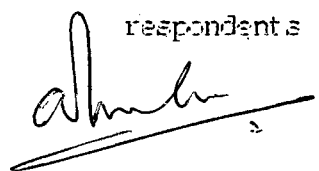
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26.7.97 and 15 additional posts were encadred by the Central Government in consultation with the State Government. He also stated that cadre review is an elaborate exercise and only such posts are encadred which are considered to be necessarily held by the IAS officers of the State cadre. He further stated that the next cadre review is due in the year 2002 and the question of encadrement or otherwise of the additional posts can be taken up only then.

5. The learned counsel for both the parties cited the judgment of the Apex Court in the case of Tamil Nadu Administrative Service Officers Association and Anr. etc. v. Union of India and ors. reported in 2000 (2) SLF 659; 2000 (2) ATC 523 (SC).

6. We have heard the learned counsel for the parties and have also perused the material on record. The rule position is quite clear and undisputed. It is for the Central Government to determine the strength and composition of each of the State Cadres in consultation with the concerned State. Further, at the interval of every 5 years, the Central Government is required to re-examine the strength and composition of each State Cadre in consultation with the State Government and makes such alterations therein as it deems fit. The second proviso to Rule 4 of the Cadre Rules empowers the State Governments to add for a period not exceeding one year and with the approval of the Central Government for a further period not exceeding 2 years to a State Cadre one or more posts carrying duties and responsibilities of a like nature to the cadre posts.

7. We have given our respectful consideration to the case of Tamil Nadu Administrative Service Officers Association (supra). The learned counsel for the applicant Association has sought support from Paras 27 and 34 whereas the learned counsel for the respondents seeks support from para 16 and 17 of the same judgment.

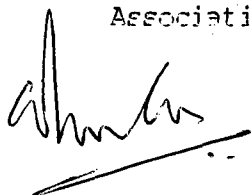


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We have gone through the entire judgment carefully. In this case, Hon'ble the Supreme Court has held that petitioners therein were not entitled to the twin relief sought for by them i.e. for a writ of mandamus to encadring the ex-cadre/temporary posts, so also for a writ of mandamus for the retrospective seniority in regard to the posts already included in the State IAS strength by virtue of 1997 amendment. The Apex Court has, however, observed that this does not mean that there is no obligation on the part of the Central Government to consider the requirement of encadring the ex-cadre/temporary posts existing in the States and that it is possible that these posts which on the face of it, are in contravention of the Cadre Rules which are created by the concerned States for reasons other than administrative exigencies and it is also possible that the Central Government has not applied its mind to the real necessity of encadring these posts. It will be useful to extract the concluding para of the said judgment as under:-


" We, however, make it clear while disposing of these petitions that it is open to the petitioners to file a detailed representation to the Central Government giving all the particulars of the post which they consider are fit to be encadred and special reasons why they should be encadred with a retrospective date and on such representation being made, the Central Government will consider these representations in consultation with the State Governments concerned, and take appropriate decisions in this regard, preferably within six months from the receipt of those representations. The petitions and appeal are disposed of accordingly. No costs."

8. The case before us is also more or less similar to the case dealt by the Apex Court in the above mentioned judgment. Schedule-B contains as many as 50 posts which, according to the applicant Association, are continuing over long period of time and are



required for managing the affairs of the State Government. If this be so, it is not a desirable situation where such large number of posts are continued over a large number of years but these are neither encadred nor directed to be abolished.

9. In view of above and following the relief granted by Hon'ble the Supreme Court in the case of Tamil Nadu Administrative Service Officers Association (supra), we dispose of this application by observing that it will be open to the applicant Association to file a detailed representation to the Central Government giving all the particulars of the posts which they consider to be fit for being encadred and on such representation being made, the Central Government will consider the representation in consultation with the State Government of Rajasthan and take appropriate decisions in this regard, preferably within six months from the date of receipt of such representation. The Original Application stands disposed of accordingly with no order as to costs.


(N.F. NAWANI)

Adm. Member


(B.S. RAJOTTE)

Vice Chairman