

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of order : 11.10.2001

1. O.A. No. 625/96

with

2. M.A. No. 519/96

V.N. Pradhan son of Shri R.N. Pradhan aged around 56 years, resident of C-66, Priyadarshi Marg, Tilak Nagar, Jaipur, presently posted as Conservator of Forest, Department Working Circle, IInd Museum Road, Jaipur.

... Applicant.

versus

1. Union of India through Secretary Ministry of Environment and Forest, Department of Environment, Forest & Wild Life, Government of India, Paryavaran Bhawan, B-Block, CGO Complex, Lodi Road, New Delhi.
2. The State of Rajasthan through Secretary, Department of Personnel, Government of Rajasthan, Jaipur.
3. Shri N.K. Mathur, I.F.S, son of Shri Murari Lal Mathur, Conservator of Forest, Forest Department, Government of Rajasthan, Jaipur.

... Respondents.

Mr. P.P. Mathur, Brief holder for Mr. R.N. Mathur, Counsel for the applicant.

Mr. Bhanwar Bagri, Counsel for the respondent No. 1.

Mr. U.D. Sharma, Counsel for the respondent No. 2.

None is present for the respondent No. 3.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for a direction to the respondents to give the benefit of officiating promotion to the applicant to Indian Forest Service (IFS, for short), and accordingly, the year of allotment of the applicant may be determined on the basis of the applicant's service in IFS on officiating basis, taking the year of allotment as 1973. The applicant contended that vide order dated 28.05.86, the applicant and his juniors were assigned 1976 as year of allotment erroneously. It was in those circumstances, the applicant's junior Shri N.K. Mathur, private respondent No. 3, had filed OA No. 126/86 before the Jodhpur Bench of the Central Administrative Tribunal, and the Tribunal vide its judgement and order dated 03.10.88, directed the respondents to assign the year of allotment to the applicant in IFS by giving him the benefit of officiating service rendered by him in the cadre post with effect from 29.07.73 with a further direction to the respondents to pay the difference of salary by treating the applicant to be in service in the senior scale with effect from 29.07.73. By relying upon the said judgement, the applicant contends that he being senior to Shri N.K. Mathur, the applicant could have been placed in the list, as a consequence of the said direction made in OA No. 126/86. The applicant's counsel further contended that the applicant was not a party to that OA, and in the year 1996, when a Civil list of IFS officer was issued by the Department of Personnel, Government of Rajasthan, vide letter No. F-5/75/Pers/A-1/94 dated 21.06.96, the applicant noticed that he was placed junior to Shri N.K. Mathur. Immediately thereafter, he made a representation on 21.09.96 (Annexure A/1). He also got issued notice for demand of justice dated 19.09.96, but the department has not taken any action for assigning the year of allotment as 1973 over and above Shri N.K. Mathur. Therefore, he has preferred this O.A. before this Tribunal. The applicant's counsel also brought to our notice a subsequent judgement of the Jodhpur Bench of Central Administrative Tribunal passed in OA No. 155/95 dated 20.02.98, in which

the other applicant by name Shri D.L.D. Mathur, who was also junior to the applicant, was granted the relief similar to the one granted in earlier O.A. No. 126/86 (N.K. Mathur's case). He also further submitted that in the O.A. filed by Shri D.L.D. Mathur, referred to above, the Jodhpur Bench of the C.A.T. had clearly observed in Para 20 of the judgement that a similarly situated person should not be forced to go to the Court for his just claim, by following the judgement of Hon'ble the Supreme Court in AIR 1989 SC 829 [Prof. T.D. Tase vs. and University of Bombay and others]. Therefore, on the basis of such general direction, the respondents should have accorded seniority of the applicant over and above Shri D.L.D. Mathur and Shri N.K. Mathur, who were admittly juniors to the applicant. Therefore, assigning seniority to such junior persons over and above the applicant would be discriminatory and violative of Articles 14 and 16 of the Constitution. He further submitted that in the case of Shri N.K. Mathur and Shri D.L. Mathur, the department while implementing those 2 judgements rendered by Jodhpur Bench of C.A.T., assigned the year of allotment as 1973 to them by taking into account the services rendered by them in IFS on officiating basis. The same benefit also, the applicant is entitled to with all consequential benefits.

2. By filing separate replies, the respondents Nos. 1 and 2 have denied the case of the applicant. They contended that this application is liable to be dismissed on the ground of limitation only. They also stated that the services of the applicant rendered on officiating basis which was confirmed by the Central Government, has been taken into account, but not his services rendered on officiating basis without any such confirmation. Therefore, he has been allotted 1976 as his year of allotment, though his promotion in the IFS was with effect from 1981. They contended that vide Notification dated 28.05.86, the applicant has been allotted the year of allotment as 1976, and if he was really

aggrieved by that order, he should have challenged the same within the limitation. But he has not done so. They have also stated that the applicant has not filed this O.A. within reasonable time, after the OA No. 126/86 filed by Shri N.K. Mathur, was decided on 03.10.88. Therefore, merely submitting one representation in the year 1996 vide Annexure A/1, the applicant cannot maintain this application. Therefore, this application is liable to be dismissed on the ground of limitation only. They also contended that Shri B.L. Meena and Shri Abhijit Ghosh were senior to the applicant, and they were assigned 1976 as their year of allotment, therefore, the applicant would not be entitled to any relief, as prayed for in this application. They have also further stated that Shri N.K. Mathur, though junior to the applicant, had filed O.A. No. 126/86 in time and obtained the relief. Since the applicant did not file such application in time, he could not be given any relief. In support of this contention, the learned counsel for the applicant relied upon the judgements of Hon'ble the Supreme Court in 2001 (1) ATJ 263 (Y. Ramamohan and Ors. vs. Government of India and Ors.), 1996 SCC (L&S) 1488 (State of Karnataka vs. S.M. Kotrayya and Ors.), and also the judgement of this Tribunal passed in OA No. 398/96 (D.M. Kalla vs. Union of India and Ors.), decided on 27.04.2001. He further contended that at any rate, the judgements rendered by the Jodhpur Bench of C.A.T. in the case of Shri N.K. Mathur in OA No. 126/86 dated 03.10.88 and in the case of D.L.D. Mathur in OA No. 155/9 dated 20.02.98, cannot be taken as good law in view of the judgement of Hon'ble the Supreme Court in 1993 (1) SLR 89 [Syed Khalid Rizvi and Others etc. vs. Union of India and Ors.]. Accordingly, the learned counsel for the respondents submits that absolutely, there are no merit in this application, and as such, this application is liable to be dismissed.

3. After hearing the arguments in detail, we perused the records

the case.

4. Before we proceed to consider the question of limitation raised by the respondents, we wish to consider few admitted facts in this case. The fact that Shri N.K. Mathur and Shri D.L.D. Mathur were juniors to the applicant, is not disputed. In fact, the promotion order of the applicant and his juniors dated 11.05.81, promoting them to the IFS from the State Forest Service of Rajasthan, shows that the applicant was senior-most in the said promotion order. As per the said promotion order dated 11.05.81, the names of the persons promoted are arranged in the following order:-

1. Shri V.N. Pradhan (applicant in the present OA No. 625/96)
2. Shri R.S. Jain
3. Shri D.L.D. Mathur (applicant in OA No. 155/95)
4. Shri N.K. Mathur (applicant in OA No. 126/86)

[The bracketed portions at sl. Nos. 1, 3 and 4 above are inserted by us for the sake of convenience].

5. At the outset, we may reject the contention of the respondents that the applicant is not entitled to the year of allotment as 1973 on the ground that S/Shri B.L. Meena and Abhijit Ghosh, were senior to him. But as contended by the applicant, S/Shri B.L. Meena and Abhijit Ghosh were direct recruits, whereas the applicant, Shri N.K. Mathur and Shri D.L.D. Mathur, were promotees. Therefore, the applicant's year of allotment has to be considered in the context of the year of allotment allotted to his juniors, S/Shri N.K. Mathur and D.L.D. Mathur. The fact that the applicant was senior to Shri D.L.D. Mathur and Shri N.K. Mathur also is not disputed by the respondents in the reply statements. It is also not disputed that Shri N.K. Mathur got the order in his favour in OA No. 126/86 vide judgement and order dated 03.10.88. It is not the case of the department that they have challenged the said order either

before Hon'ble the High Court or before Hon'ble the Supreme Court. If that is so, those judgements rendered by Jodhpur Bench of the C.A.T. in respect of his juniors have become final. Moreover, in the application filed by Shri D.L.D. Mathur in O.A. No. 155/95, the Jodhpur Bench has clearly stated in para 20 of its judgement dated 20.02.98 that while implementing the judgement and order of this Tribunal in respect of Shri N.K. Mathur, the case of the applicant therein and other seniors should not have been ignored and they should not have been forced to go to the Court for their just claim. We think it appropriate to extract the said paragraph as under:-

"20. The letter dated 28.05.86 (Annex. A/6) assigning the year of allotment to various officers including the applicant further supports the seniority position of the applicant. Therefore, while implementing the order of the Tribunal in respect of Shri N.K. Mathur, applicant's claim for assigning him allotment year 1973 should not have been ignored by the respondents. In our opinion, a similarly situated person should not be forced to go the Court for his just claim. In this regard principle laid down in AIR 1989 SC 829 - Prof. C.D. Tase vs. University of Bombay and others (Para 5) helps the applicant."

6. Moreover, in the case of D.L.D. Mathur, his claim was rejected by the department on the ground of delay and laches only. But this Tribunal observed that in view of the admitted position that Shri D.L.D. Mathur was senior to Shri N.K. Mathur, and if for certain fortuitous reason Shri N.K. Mathur was allotted to officiate for longer duration, the seniority of Shri D.L.D. Mathur would not be affected. It was also observed that if such situation is allowed to prevail then a junior officer would become senior to all of his seniors, who started officiating on a cadre post later than such junior. The Tribunal also further observed that the State of Rajasthan should have controlled the situation by posting officers on officiating basis as per their seniority on the cadre post, and even the controlling authority, i.e. Government of India, also should have seen that no such anomalous situation was created by which a junior officer due to longer period of officiation would become senior to his seniors. Accordingly, it

overlooking the question of limitation, the Jodhpur Bench of C.A.T. directed the respondents to accord the year of allotment to Shri D.L.D. Mathur, over and above his juniors. Having regard to the admitted position, in our considered opinion, the department should have considered the case of the applicant, who was senior to both S/shri D.L.D. Mathur and N.K. Mathur by placing the applicant in the same position his juniors occupied by assigning the year of allotment as 1973, instead of 1976. Moreover, in view of the observation in para 20 of the judgement in O.A. No. 155/95 (D.L.D. Mathur vs. Union of India and Ors.) decided on 20.02.98, the applicant should have been considered by the department on their own without forcing the applicant to approach this Tribunal. Having regard to these circumstances, in our considered opinion, the question of limitation would only be an academic and it would not come in the way of the applicant for getting similar benefit granted in O.A. No. 126/86 and O.A. No. 155/95 (supra). The most unfortunate situation for the applicant was that the application filed by Shri D.L.D. Mathur was pending at Jodhpur Bench, which was disposed by the judgement and order dated 20.02.98, but the applicant's case was pending before this Tribunal right from the year 1996. If both these applications were to be considered together, the applicant would have got the reliefs similar to his junior, Shri D.L.D. Mathur. In this view of the matter, the contention of the respondents regarding limitation is not acceptable. Therefore, the judgements of Hon'ble the Supreme Court and also the judgement of this Tribunal referred to above, are distinguishable from the facts of the case.

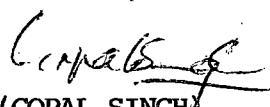
7. The further contention of the respondents is that those judgements rendered by the Jodhpur Bench of C.A.T., cannot be taken as a good law in view of the judgement of Hon'ble the Supreme Court in 1991 (1) SLR 89 [Syed Khalid Rizvi and others etc. vs. Union of India Ors.]. It is no doubt true that in the said judgement, Hon'ble the

Supreme Court held that the seniority in IPS would be counted only from the date the officer was brought into the select list. It also observed that in an appropriate case, the Central Government can relax the condition. Hon'ble the Supreme Court also pointed out that under Rule 9 of the IPS (Appointment by Promotion) Regulations, 1955, the year of allotment of an officer would be determined on the basis of juniormost among the direct recruit officers to the Service in accordance with the Rule 7 of the Recruitment Rules, who has officiated continuously in a senior post from a date earlier than the date of commencement of such officiation of the senior. In the instant case, the Central Government by relaxing the said condition only took into account the services of the applicant and others rendered on officiating basis from the year 1976 though they were actually appointed in the year 1981. If that is so, the relaxation so accorded should be such that it would not create any discriminatory situation. As directed by the judgement dated 03.10.88 of Jodhpur Bench of C.A.T. in O.A. No. 126/86, the year of allotment of Shri N.K. Mathur, who was admittedly junior to the applicant, was taken as 1973, and so also the year of allotment in the case of Shri D.L.D. Mathur, who was also admittedly junior to the applicant, was taken as 1973 vide order dated 20.02.98 in OA No. 155/95. While implementing those judgements, the case of the applicant, who was admittedly senior to them should have also been taken care of. Therefore, allotting the year of allotment to the juniors as 1973, and allotting the year of allotment as 1976 to the applicant, is highly discriminatory and violative of Articles 14 and 16 of the Constitution. Moreover, it would be an heart burning issue to the applicant. We are not only Court of law, but we are also the Court of equity. Denying benefit to the applicant when his juniors have been accorded the same would be highly inequitable. Therefore, in our considered opinion keeping aside the technicalities as to the point of limitation, the applicant is entitled to the relief, as prayed for in this application.

Even otherwise, having regard to the circumstances narrated above, we think it appropriate to condone the delay by accepting the cause shown and accordingly, the M.A. is allowed. in M.A. No. 519/96. Therefore, in our considered opinion, even the judgement of Hon'ble the Supreme Court reported in 1993 (1) SLR 89, would not come in the way of the applicant, as contended by the learned counsel for the respondents. Moreover, the contention based on this judgement also was not urged when the Jodhpur Bench of C.A.T. decided the O.A. No. 155/95 dated 20.02.98. Thus, the respondents are taking inconsistent stand in this case only to deny the benefit, which the applicant is entitled to. The applicant's junior Shri N.K. Mathur, who had filed O.A. No. 126/86 before Jodhpur Bench, is made as private respondent No. 3, in this case. But he has not denied the case of the applicant by filing any reply, knowing fully well that the applicant being senior to him, would be entitled to the relief as prayed for.

8. For the above reasons, this application succeeds. Accordingly, we pass the order as under:-

"The O.A. is allowed. The applicant's year of allotment shall be treated as 1973 instead of 1976, while implementing the judgements of Central Administrative Tribunal, Jodhpur Bench, in OA No. 126/86 (N.K. Mathur vs. Union of India & Ors.) decided on 03.10.88 and OA No. 155/95 (D.L.D. Mathur vs. Union of India & Ors.) decided on 20.02.98 by placing the applicant over and above the applicants therein. The applicant shall be entitled to all consequential benefits. No costs."


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman


CVR.