

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

ORIGINAL APPLICATION No. 144/2002

Jaipur, the 19th day of January, 2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. A.K.BHANDARI, MEMBER (ADMV.)

M.C.Arya,
s/o late Shri Birbal Ram,
r/o Plot No.B-294,
Hari Marg, Malviya Nagar, Jaipur,
(presnetly posted as the Collector
and District Magistrate,
Barmer (Rajasthan)

.. Applicant

By Advocate : Shri Jitendra Sharma, proxy counsel to
Shri Anurag Sharma

Versus

1.Union of India
through the Secretary
Ministry of Personnel PG and
Pension,
Department of Personnel and Training,
Government of India,
New Delhi.

2.The Secretary,
Department of Personnel,
Government Secretariat,
Jaipur

.. Respondents

By Advocates: Shri U.D.Sharma, for respondent No.2
Shri H.C.Bairwa, proxy counsel to
Shri Bhanwar Bagri for respondent No.1

ORDER

Per M.L.Chauhan, Member (J)

The applicant has filed this Original Application
thereby praying for the following reliefs:-

"i) by appropriate order or direction, the entire
relevant record of the non applicants, pertaining to

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the case, may be summoned.

ii) by appropriate order or direction, the non applicants may be directed to review the seniority of the applicant in I.A.S. cadre by treating the notional (assigned) services of the applicant from the year 1972 as actual service and he may be assigned seniority of the year prior to 1989.

iii) by an appropriate order or direction, the non applicants may be directed to grant all consequential benefit in favour of the applicant, monetary or otherwise, to which the applicant is entitled on the ground of his reviewed seniority in the I.A.S. Cadre.

iv) by an appropriate order or direction, the non applicants may be directed to pay interest @ 18% p.a. on the arrears and other benefits accrued to the applicant on the ground of review of his seniority.

iv).....

v)....."

2. Briefly stated, the applicant was appointed to the Rajasthan Administrative Service (RAS for short) under the RAS Emergency Recruitment Rules, 1976 which service he joined in the year 1989. However, subsequently he was assigned notional seniority from the year 1972 on the basis of the judgment rendered by the Rajasthan High Court and as upheld by the Apex Court whereby it was held that while fixing seniority in the RAS cadre, the period of notional service should be counted while reckoning the period of actual service rendered by them in order to determine 20 years of service as required under the rules so as to consider their eligibility in the Super Time Scale of RAS. Such decision was rendered in the Writ Petition filed by Shri Keshri Singh and K.P.Singhal and accordingly the benefit of this judgment was also extended to the applicant. It is further case of the applicant that pursuant to the decision given by the Single Judge of the Rajasthan High Court and as confirmed by the Apex Court, the applicant was promoted to RAS Super Time Scale against the vacancies of 1992-93

whereas Shri Keshri Singh and Shri K.P.Singhal were promoted against the vacancies of 1993-94 vide order dated 4.4.1998 (Ann.A4). The grievance of the applicant in this case is that though S/Shri Keshri Singh and K.P.Singhal have been granted benefit of notional seniority for the purpose of appointment in the Indian Administrative Service (IAS for short) w.e.f. 31.12.1993 whereas the benefit of such notional seniority has not been given to the applicant while appointing him to IAS on 30.9.1994 and his name has been shown at Sl.No.21 in the select list of 1993-94 whereas name of S/Shri Keshri Singh and K.P.Singhal has been included at Sl.No.7A and 7B of the select list of 1993-94 on the recommendations of the review selection committee meeting held on 9.1.96. The applicant has contended that he is similarly situated to that of these two persons, as such he should also be extended the benefit of notional seniority by counting his emergency services for the purpose of calculating his eligibility for promotion to IAS thereby assigning year of allotment prior to the year 1989. It is on this basis that the applicant has filed this OA thereby praying for the aforesaid reliefs.

2.1 Alongwith OA, the applicant has also filed Misc. Application No.328/02 for condonation of delay. In this MA, it has been stated that despite various representations submitted by the applicant, the respondents issued civil list on 1.2.2002 wherein the applicant has been placed at Sl.No.166 in place of his position between Sl.No.145 and Sl.No.146. Thus, according to the applicant, the cause of action has accrued to him with the publication of the Civil List of IAS officers dated 1.1.2002. The applicant has also placed reliance on the decision in the case of State of

Bihar vs. Kameshwar Prasad Singh, 2000 Vol.4 SLR 8, wherein it has been held that the technicalities of law cannot prevent courts to do substantial justice and undo illegalities. It is, therefore, averred that the delay, if any, in filing OA may be condoned in the interest of justice.

3. The respondents have filed reply to the OA as well as to the MA. As regards the point of limitation, it has been stated that the OA is thoroughly misconceived. It is stated that the applicant has not indicated and substantiated as to in which Civil List of a particular year, his position has been placed between Sl.No.145 and 146. It is stated that in fact the Civil Lists are published every year wherein the name of IAS officers are mentioned indicating particulars of appointment, posting , pay etc. The respondents have also placed on record civil list as on 1.1.97 on record as Ann.R-2/3. In the civil list as on 1.1.97, his name appears at Sl.No.191 whereas names of S/Shri Keshri Singh and K/P.Singhal have been placed at Sl.No.173 and 174 respectively. Further, in the Civil List as on 1.1.98, his name appear at Sl.No.185 whereas name of S/Shri Keshri Singh and K.P.Singhal find place at Sl.No.167. Thus, according to the respondents, the cause of action can be said to have been accrued to him on publication of the Civil list of 1997 wherein the applicant has been shown junior to S/Shri Keshri Singh and K.P.Singhal. It is, therefore stated that the application is hopelessly time barred and the contention of the applicant that the cause of action accrued to him on publication of Civil list of 2002 is totally misconceived and thus barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and, therefore it is not

maintainable and deserves to be dismissed on this ground. The respondents have also relied upon the decisions of the Apex Court in the case of Ramesh Chand Sharma vs. Udham Singh Kamal, 2000 SCC (L&S) 53 and Secretary to the Govt. of India vs. Shiv Ram Mahadu Gaikwad, 1995 (6) SLR 812 to support their contention. It has been stated that the judgment of the Apex Court in the case of State of Bihar vs. Kameshwar Prasad Singh (supra) as relied upon by the applicant has no application.

3.1 On merits, it has been stated that the applicant was appointed to IAS on 30.9.94 on the basis of civil list of 1993-94 vide notification dated 23.12.93 (Ann.R-2/1) wherein the name of the applicant has been shown at Sl.No.19. The applicant was assigned year of allotment as 1989 taking into account his completed and actually rendered service in the State Civil Service which is solely relevant for determination of the year of allotment and seniority. It is further stated that fixation of seniority in IAS is governed by the Indian Administrative Service (Regulation of Seniority) Rules, 1987 and according to these rules only the continuous actual service rendered in the State Civil Service is taken into account for determination for year of allotment and seniority. The benefit of notional service is not given while determining the 'seniority in the IAS. In the cases of S/Shri Keshri Singh and K.P.Singhal, these two officers has filed a Contempt Peition No.273/1995 in CWP No.5837/92 in Rajasthan High Court, Jaipur. According to directions of the court in the said petition vide order dated 8.8.95, S/Shri Keshri Singh and K.P.Singhal were given the benefit of notional service from 1.4.1972 and were granted Super Time Scale in the RAS. On Court direction the benefit of revised

higher seniority in RAS cadre was further extended to these persons by revising their date of appointment to IAS after a Review Selection Committee meeting was convened for reviewing the select list for 1993-94 on 9.1.96 which recommended that the name of Shri Keshri Singh and Shri K.P.Singhal be included at Sl.Nos. 7A and 7B respectively of the select list. Accordingly S/Shri Keshri Singh and K.P.Singhal were deemed to have been appointed in the IAS w.e.f. 31.12.1993 from the 1993-94 select list. These two officers got benefit of counting their emergency service for the purpose of calculating their eligibility for promotion to IAS on court directions. Consequently, the benefit of fixation of seniority as 1988 followed accordingly. However, since the applicant was at Sl.No. 21 of the select list of 1993-94 and he was appointed to the IAS on 30.9.94 with reference to his date of appointment to the service, the applicant was correctly assigned 1989 as his year of allotment in accordance with IAS (Regulation of Seniority) Rules, 1989. Hence, seniority of the applicant has been correctly fixed as per the said seniority rules.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 As already noticed above, the grievance of the applicant in this OA is that he was assigned year of allotment as 1989 reckoning his seniority w.e.f. the year 1978 in the RAS whereas the notional services rendered by him under the RAS Emergency Recruitment Rules, 1976 from the year 1972 should also be considered while computing his seniority in the IAS cadre and consequential benefits be granted to him. His further contention is that S/Shri Keshri Singh and K.P.Singhal

who were junior to him, were assigned the year of allotment as 1988 whereas he has been assigned 1989.

4.2 Before dealing with the contention of the applicant on merit, it will be relevant to consider the preliminary contentions raised by the learned counsel for the respondents regarding limitation. From the material placed on record, it is evident that the applicant was appointed to the IAS w.e.f. 30.9.94 as can be seen from notification dated 23rd December, 1994 (Ann.R-2/1) wherein his name find mention at SL.No.19 and he was assigned year of allotment as 1989 taking into account his completed and actually rendered service in the State Civil Service. In this OA, the grievance of the applicant is that he should be assigned year of allotment prior to 1989. In case the applicant was aggrieved by assigning the year of allotment as 1989 as shown in letter dated 23 December, 94 (Ann.R-2/1), he should have agitated the matter within the time prescribed under Section 21 of the Administrative Tribunals Act, 1985. Thus, according to us, the cause of action has arisen in favour of the applicant firstly in the year 1994 when the year of allotment was assigned to the applicant as 1989. Further, the cause of action has also arisen in favour of the applicant in the year 1996 when so called junior to the applicant namely S/Shri Keshri Singh and K.P.Singhal were included in the select list of 1993-94 at Sl.No.7A and 7B on the recommendations of the Review Selection Committee meeting held on 9.1.96 whereas the name of the applicant appeared at Sl.No.21 in the 1993-94 select list. Further, the cause of action has arisen in favour of the applicant in the year 1997 when the civil list as on 1.1.97 was published wherein the name of the applicant

was shown at Sl.No.191 whereas name of S/Shri Keshri Singh and K.P.Singhal has been shown at Sl.No.173 and 174. Further, based on the said civil list of 1997, another civil list as on 1.1.98 was also published wherein name of the applicant was shown at Sl.No.185 whereas name of Shri K.P.Singhal has been shown at Sl.No.167. Thus, the cause of action has accrued in favour of the applicant firstly in the year 1994, secondly in the year 1996 when on the recommendation of the Review DPC S/Shri Keshri Singh and K.P.Singhal were shown senior to the applicant and also in the year 1997 when the gradation list was issued pursuant to Review DPC held in the year 1996. Admittedly, the applicant has not availed the remedy available to him under the Administrative Tribunals Act, 1985. The applicant has filed this OA basing his claim on the civil list published in the year 2002 which admittedly, is based on the civil list of 1997 followed by civil list of 1998. Thus, according to us, the application is hopelessly time barred and we see no justification to entertain the stale claim of the applicant. The learned counsel for the applicant argued that he made repeated representations to the authorities on 22.7.1996 followed by representation dated 2.12.98 and further representation dated 16.8.2000 with a prayer to review the seniority in the light of the facts mentioned therein, but no action was taken by the respondents on the said representations. According to us, this fact itself does not constitute sufficient cause for condonation of delay. It has been consistently held by the Apex Court in a number of judgments that successive representations cannot justify entertaining of an application filed after expiry of the period of limitation unless the relevant service rules as to the

redressal of grievance provide for such representations. Further, it has also been held by the Apex Court that the Tribunal established under the Administrative Tribunals Act cannot entertain an application filed after expiry of the period of limitation prescribed under Section 21(1) of the AT Act unless there exists sufficient cause for not filing the application within the prescribed period of limitation. At this stage, it will be useful to notice the relevant decision of the Apex court where the question of limitation and cause of action in the light of Section 21 of the AT Act was considered:-

4.2.1 The ambit and scope of Section 21 of the Act was first considered by a 5 Judges Bench of the Supreme Court in S.S. Rathore vs State of Madhya Pradesh, AIR 1990 SC 10 : [1989 (5) SLR 779 (SC)] in the backdrop of the dismissal of the appellant's suit as barred by time. Their Lordships of the Supreme Court referred to the provisions of the Limitation Act, 1963 and Sections 20 and 21 of the Act and held as under :-

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken

away by the Act and, therefore, as far as Government Servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment, shall not be taken into consideration in the matter of fixing limitation."

4.2.2 In the Secretary to Govt. of India and others vs. Shivram Mahadu Gaikwad, 1995 Supp. (3) SCC 231, the Supreme Court held that an application filed in the year 1990 questioning the order of discharge from service passed on 7.10.1986 was liable to be dismissed as barred by limitation. Their Lordships further held that in the absence of an application of condonation of delay, the Tribunal cannot entertain the application filed after the expiry of the period of limitation prescribed under Section 21(1) of the Act.

4.2.3 In Administrator of Union Territory of Daman and Diu and others vs. R.D.Valand, 1995 Supp. (4) SCC 593, their Lordships of the Supreme Court quashed the order passed by Bombay Bench of the Tribunal which had, entertained the claim of respondent for retrospective promotion and held as under:

"The Tribunal was not justified in entertaining the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.9.1972. As cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8.10.1986. Thereafter, for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March, 1990. In

the facts and circumstances of the present case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way."

4.2.4 In Dhala Ram vs. Union of India, (1997) 11 SCC 2001, the Supreme Court held that an application filed in 1993 questioning 1988 rejection of the claim for compassionate appointment was liable to be dismissed as barred by limitation.

4.2.5 In Ramesh Chand Sharma vs. Udham Singh Kamal, 1999 (5) SLR 654 (SC), the Supreme Court held that the Tribunal did not have the jurisdiction to admit on application filed after 3 years of the rejection of representation in the matter of promotion.

4.2.6 In Govt. of Andhra Pradesh vs. Mohd. Ghosh Mobinuddin, 2001 (4) RSJ 477, the Supreme Court allowed the appeal filed by the Govt. of Andhra Pradesh against the order passed by Andhra Pradesh Administrative Tribunal and held that an application filed after more than 15 years of the notification issued by the Government for re-organisation of the cadre was liable to be dismissed as barred by limitation.

4.2.7 In Y. Ramamohan and others vs. Government of India and others, (2001) 10 SCC, 537, the Supreme Court held that disposal of repeated representations made by the employee would not justify condonation of delay in filing the application. In that particular case, the appellant had approached the Tribunal in 1990 for quashing common gradation list which was communicated to him on 3.5.1983. The Tribunal rejected the application

as barred by time. Their Lordships of the Supreme Court upheld the order of the Tribunal and observed as under:

"In the case in hand, when the Tribunal has recorded a finding in the year earlier case that the gradation list had been duly communicated in the year 1983, we must assume that the applicants knew of the gradation list assessing them the year of allotment as 1976, in 1983, and therefore the so called representation filed by the appellants to the Central Government after disposal of the earlier application filed by the direct recruits is nothing but a subterfuge to get a period of fresh limitation. This method adopted by the appellants disentitles them to any relief. That apart, the gradation list of the year 1983 allotting 1976 as the year of allotment to the appellants has almost settled the seniority list, which need not be disturbed after this length of time."


4.2.8 In Director of Settlement and others v. D.Ram Prakash, 2002 (1) SLR 306 (SC), the Supreme Court reversed the order of Andhra Pradesh Administrative Tribunal and held that the Tribunal should not have entertained the application ignoring the period of limitation. The facts of the case were that seniority of the respondent in the cadre of Surveyor was determined taking his entry into service w.e.f. 1.2.1978. In the year 1985, he filed representation claiming that the period of training from 1.10.1971 to 1.2.1972 shall be counted for the purpose of fixation of seniority. The same was rejected. In 1996, he made fresh representation which was rejected on 17.10.1998. Thereafter, he filed an application before the Tribunal. The Tribunal accepted the application and directed the non-applicants to count the period of training for the purpose of fixation of seniority of the respondent. Their Lordships of the Supreme Court reversed the order of the Tribunal and held that it should have rejected the claim on the ground of limitation as provided under Section 21 of the Act.

4.3 Viewing the matter from the law laid down by the Apex Court vis-a-vis the facts in the present case, we are of the view that the applicant has not made out any ground to condone the delay in filing the OA. As already stated above, the cause of action has accrued in favour of the applicant firstly in the year 1994 (Ann.R-2/1) when he was assigned year of allotment as 1989 and thereafter in 1996 when pursuant to the Review DPC S/Shri Keshri Singh and K.P.Singhal were assigned seniority at Sl.No.7A and 7B in the select list of 1993-94 over and above the applicant where his name was shown at Sl.No.21 and thirdly in the year 1997 when the select list was published where S/Shri Keshri Singh and K.P.Singhal were shown senior to the applicant. The applicant has not given any explanation whatsoever why he has not approached the Tribunal practically for 5 years when the first civil list was published in 1997 where he was shown junior to S/Shri Keshri Singh and K.P.Singhal and the subsequent civil list published in the year 2002 will not afford fresh cause to the applicant especially when gradation list of 1997 as well as appointment letter dated 23.12.94 (Ann.R-2/1) thereby assigning 1989 as the year of allotment to the applicant has almost settled the seniority position of the applicant, which cannot be disputed at this belated time. Accordingly, the OA is liable to be dismissed on this ground alone.

4.4 That apart, even on merits, the applicant has not made out any case for our interference. There is no dispute to the fact that seniority/year of allotment in the IAS cadre has to be fixed on the basis of actual service rendered by a person in the State Civil Service

in terms of provisions contained in Rule 3(3)(ii) of the Seniority Regulations which only stipulates that continuous actual service rendered in the State Civil Service has to be taken into account for determination of year of allotment and seniority. According to this rule, the benefit of notional seniority can not be given while determining seniority in the IAS. There is no dispute that the applicant has been assigned year of allotment as 1989 taking into account his completed and actual service rendered in the State Civil Service w.e.f. the year 1978. According to us, his notional service rendered by him under RAS Emergency Recruitment Rules, 1976 from the year 1972 cannot be considered while computing his seniority in the IAS cadre as per the provisions of Seniority Rules. In case such benefit has been given to S/Shri Keshri Singh and K.P.Singhal pursuant to the order passed in Contempt Petition No.273/95 in CWP No.5837/92 such benefit cannot be extended to the applicant solely on that basis contrary to statutory rules.

4.5 At this stage it may also be useful to refer to the decision rendered by the Full Bench Mumbai of this Tribunal in the case of Dr. Sitaram Raghunath Kapse vs. State of Maharashtra and ors. 1997-2001 ATFBJ page 186 where almost similar controversy was involved regarding promotion of a State Civil Service officer to IPS and the Full Bench held that it is the actual service rendered in the State Civil Service which should be taken into consideration for the purpose of eligibility for being inducted in the IPS and notional or deemed promotion cannot be taken into consideration for the purpose of eligibility for being inducted to IPS cadre.




5. For the reasons stated above, the OA is dismissed with no order as to costs.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)