

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.225 of 1996

And

Original Application No.16 of 1998

Date of decision: This the 5th day of January 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

I. O.A.No.225/96

Shri J.S.L. Vasava, IAS,
Commissioner & Secretary,
Social Welfare Department,
Government of Assam,
Dispur, Guwahati.Applicant

By Advocates Mr B.K. Sharma and Mr S. Sarma.

-versus-

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Personnel, Public Grievances
and Pension,
Department of Personnel and Training,
New Delhi.

2. The State of Assam, represented by the
Secretary to the Government of Assam,
Department of Personnel,
Assam Secretariat (Civil),
Dispur, Guwahati.

3. The Accountant General (A&E),
Assam, Meghalaya, etc.,
Shillong.Respondents

By Advocates Mr G. Sarma, Addl. C.G.S.C.,
Mr B.S. Basumatary, Addl. C.G.S.C.,
Dr Y.K. Phukan, Sr. Government Advocate, Assam and
Ms M. Das, Government Advocate, Assam.

II. O.A.No.16/98

Shri J.S.L. Vasava, IAS,
Commissioner of Upper Assam Division, Jorhat
and North Assam Division,
Tezpur.Applicant

By Advocates Mr B.K. Sharma and Mr S. Sarma.

-versus-

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Personnel, Public Grievances &
Pension, Department of Personnel & Training,
New Delhi.

2. The State of Assam, represented by the
Secretary to the Government of Assam,
Department of Personnel,
Assam Secretariat (Civil), Dispur.
Guwahati.

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3. The Director,
Government of India,
Ministry of Personnel, Public Grievances &
Pension,
Department of Personnel and Training,
New Delhi. Respondents

By Advocates Mr G. Sarma, Addl. C.G.S.C.,
Mr B.S. Basumatary, Addl. C.G.S.C.,
Dr Y.K. Phukan, Sr. Government Advocate,
Assam and Ms M. Das, Government Advocate,
Assam.

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O R D E R

BARUAH.J. (V.C.)

Both the original applications (O.A.No.225/96 and O.A.No.16/98) involve common questions of law and similar facts; therefore, we propose to dispose of both the applications by a common order. The facts are:

Before filing of original application No.225/96, the applicant was Secretary to the Government of Assam, Agricultural Department. In the month of August, 1995 the applicant was promoted to the supertime scale of Indian Administrative Service (IAS for short) by Annexure 1 Notification dated 22.8.1995. He took over charge of the supertime scale as per Annexure 2 letter dated 23.8.1995. A year thereafter, i.e. on 24.5.1996 the Accountant General (A&E), Meghalaya, etc., Shillong-3rd respondent informed the applicant by Annexure 9 letter enclosing Annexure 10 D.O. letter dated 19.1.1996 that the applicant was promoted before the completion of his sixteen years of service as prescribed. By Annexures 11 and 12 the applicant had been issued pay slips only in respect of Selection Grade even though by that time the applicant was holding supertime scale post. Situated thus, the applicant submitted Annexure 13 letter dated 10.7.1996 urging the Accountant General for issuance of pay slip enabling him to draw salary for the

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supertime scale. Thereafter, the applicant also issued Annexure 14 Legal Notice dated 27.7.1996 to the Accountant General through his Advocate, Shri B. Mehta, demanding the Accountant General to issue pay slips to the applicant for supertime scale, else he informed that proper legal steps would be taken against him. Thereafter, the present application has been filed.

2. In due course the respondents have entered appearance. Respondent No.3- Accountant General submitted a written statement and also an additional written statement. The Union of India- respondent No.1 and the State of Assam- respondent No.2 chose not to file any written statement. The respondent No.1 also decided neither to oppose nor to support the case of the applicant as will appear from Annexure R XI letter dated 30.12.1996 to the Additional written statement. The 3rd respondent's contention before the Tribunal is specifically spelt out in para 4 of the written statement. We quote the said para:

.....that the Govt. of Assam, Department of Personnel (Personnel.A) Dispur, Guwahati vide notification No.AAI.44/88/298, 298.A, 298.B, dated 22.8.95 promoted S/Shri J.S.L. Casava (Sic J.S.L. Vasava), IAS (RR-1982) i.e. the applicant, B.V.P. Rao, IAS(RR-1982) and Dr.R.K. Baruah, IAS (SCS-1982) to officiate in the Supertime scale of IAS. All the three officers belong to the 1982 batch of IAS and have not completed 16 years of service on the date they were promoted to the supertime scale. As these promotions violate the guidelines laid down by the Government of India in its letters No.11030/20/75-AIS(II) dated 27-12-1975 (copy annexed as Annexure R.I), No.11030/4/82-AIS(II) dated March 1983 (copy annexed as Annexure R.II), No.11030/13/92-AIS(II) dated 5.11.92 (copy annexed as Annexure R-III), D.O.letter No.11030/3/96-AIS-II dated 23-2-96 (copy annexed as Annexure R-IV) and D.O.No.11030/3/96-AIS(II) dated 30-7-96(copy annexed as Annexure R-V), this office did not authorise pay in the supertime grade/scale but continued to authorise pay in the selection grade scale. As regard the matter of entitlement of the applicant and others to the supertime scale, this office took up the matter with the Government of India vide D.O.No.MGI/IAS/A/S.T./182 dated 3-9-96, copy of which is annexed herewith as Annexure R-VI, to which reply is awaited."

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3. During the pendency of this application, i.e. original application No.225/96, the Director, Ministry of Personnel, Public Grievances and Pension, Government of India issued an order dated 27.8.1997 setting aside the promotion of the applicant to the supertime scale of IAS by order dated 22.8.1995. According to the applicant this had been done without issuing any notice to the applicant and without following due process of law. Situated thus, the applicant has approached this Tribunal for the second time by filing yet another application (O.A.No.16/98) challenging Annexure 5 order dated 27.8.1997 to the original application No.16/98. In this case no written statement has been filed by any of the respondents.

4. The contention of the respondent No.3 in the original application No.225/96, inter alia, is that since the Central Government laid down certain criteria for promotion to the supertime scale as sixteen years of service, the applicant having not completed sixteen years of service at the time of promotion he was not entitled to draw salary of the promotional post. The contention of the applicant is that from Annexures R III and R IV to the written statement it is clear that the Government of India had extended relaxation in the matter of such promotion and in view of the above the applicant is entitled to receive pay slips for the promotional post of supertime scale. The further contention of the applicant is that the sixteen years criteria has never been adhered to so far IAS officers of Assam-Meghalaya Cadre are concerned. According to the applicant, from the records, in fact, it will appear that many officers without completing the prescribed period of sixteen years had been promoted to the supertime scale in the past. Annexure R IX letter dated 27.12.1996 to the written statement was written by the Accountant General- 3rd respondent (in O.A.No.225/96) to the Chief Secretary to the Government of Assam, wherein it was agreed that many officers similarly

placed had been promoted to the supertime scale prior to 1982 batch and they were issued pay slips in the promotional post of supertime scale by the office of the Accountant General. The relevant portion of the said letter is extracted below:

".....However, similarly placed officers who have been promoted to the Super Time Scale prior to the 1982 batch have been authorised Pay Slip in the Super Time Scale by this office pending confirmation by the Government of India (list enclosed). I would request you to kindly seek Govt. of India's relaxation of this requirement of 16 years of service specifically for these officers and convey the same to us at an early date. We have also written to the Govt. of India on the matter vide our letter No.MG-I/IAS/(A)/ST/293 dt 27.12.96 addressed to the Jt. Secretary, Dept. of Personnel....."

In Annexure R 8 letter, the Accountant General wrote to the Joint Secretary, Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension that the supertime scale had been given to the officers who were promoted to the supertime scale without completing the period of sixteen years. The relevant portion of the said letter is quoted below:

".....However, pay in the Super Time Scale had been authorised to similarly placed officers belonging to earlier batches (i.e. before 1982) subject to confirmation by the Govt. of India which has not been received so far. Thus this differential treatment may be viewed by the Central Administrative Tribunal as tantamounting to discrimination. To avoid this, the only alternative left to us is to recover the pay authorised to such officers for the period between their promotion to the Super Time Scale and completion of 16 years of service, unless the Govt. of India gives specific relaxations in these cases."

5. In para 9 of the written statement the respondent No.3 (in O.A.No.225/96) has stated thus:

".....However, it has already been stated by the respondent vide letter No.MGI/IAS(A)/933(Assam) dated 19.1.96 to the Chief Secretary, Government of Assam that their benefits will have to be withdrawn through revised pay slips....."

slips/recovery slips if the rules are not relaxed by the Govt. of India specifically in their cases, the matter stands referred to the Govt. of India vide letter No.MGI/IAS/A/ST/182 dated 3.9.96. However, action for recovering the excess pay drawn by all such officers have already been initiated vide our letter No.MGI/IAS/(A)/ST/293 dated 27.12.96 to the GOI and letter No.MG-I/IAS/(A)/ST/294 and letter No.MG-I/IAS/(A)/ST/295 dated 27.12.96 to the Chief Secretary to the Govt. of Assam and Meghalaya....."

In the written statement, however, nothing has been stated as to whether any recovery proceedings has been initiated or not.

6. We have heard Mr B.K. Sharma, learned counsel for the applicant, Mr G. Sarma, who was the Addl. C.G.S.C. at the time of initial hearing of the application and Mr B.S. Basumatary, learned Addl. C.G.S.C. appearing on behalf of the respondent Nos.1 and 3 now and Dr Y.K. Phukan, learned Sr. Government Advocate, Assam for respondent No.2.

7. Mr B.K. Sharma submits that the withholding of the supertime scale by the respondent No.3 is not only illegal, but unfair, unreasonable and unjust. According to him the criteria of sixteen years service was never adhered to at least to the knowledge of the applicant so far as Assam and Meghalaya Joint Cadre is concerned. He further submits that the respondent No.3 has no business to question the appointment when the appointing authority made the appointment. Besides, other officers prior to him had also been promoted to the supertime scale without completing the prescribed period of sixteen years and respondent No.3 issued pay slips for supertime scale in respect of those officers. There had been a violation of the equality clause in treating the applicant differently from those officers. He further submits that there is malice in law in handling the matter of the applicant. Besides this, the learned

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counsel submits that so long the appointment made by the competent appointing authority is not set aside either by the appointing authority or by some other competent authority the respondent No.3 has no power, authority or jurisdiction to question the appointment and refuse pay slips. It is further submitted that the "sixteen years service" is not a requirement under the IAS (Pay) Rules, 1954. The learned counsel has drawn our attention to Rule 3 of the IAS (Pay) Rules, 1954. We quote the relevant portion of Rule 3.

"3. Time scale of pay.-(1) The Scales of pay admissible to a member of the Service and the dates with effect from which the said scales shall be deemed to have come into force, shall be as follows :-

Junior Scale Rs.2200-75-2800-EB-100-4000 with effect from the 1st day of January, 1986.

i) Senior Scale- Time Scale 3200-15th and 26th-100-3700-125-4700 with effect from the 1st day of January, 1986.

ii) Junior Administrative Grade- Rs.3950-125-4700-150-150-1500 (non-functional) with effect from the 1st day of January, 1986;

Provided that a member of the Service shall be appointed to the senior scale on his completing 4 years of service, subject to the provisions of sub-rule (2) of Rule 6-A of the Indian Administrative Service (Recruitment) Rules, 1954 and to the Junior Administrative Grade on completing 9 years of service."

Citing this rule Mr B.K. Sharma has tried to impress upon us that "sixteen years of service" is not a requirement as envisaged under the Rules. Therefore, the Office Memorandum is contrary to the rules and the Office Memorandum has taken away the right of the persons who have not completed the period of sixteen years. Mr Basumatary very fairly submits that the State Government is empowered to grant supertime scale. He also does not dispute that if an appointment is made by the competent authority so long it is not set aside by that competent authority or any

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other authority competent to do so the 3rd respondent may not have any say. He also admits that in earlier cases relaxation had been made. Only in the applicant's and some other officers' case objection had been raised by the respondent No.3. Mr Basumatary also agrees that in the year 1996 by Annexure R-IV letter dated 23.2.1996 relaxation was not objected to, however, a note of caution was issued not to do the same in future. Mr G. Sarma, in his submission, has drawn our attention to para 17 of the written statement. In the said para 17 of the written statement the respondents have stated that in the absence of any rule the guidelines issued by the Government is applicable. Dr Y.K. Phukan, on the other hand, submits that the power to give supertime scale rests with the State Government and as was done earlier in case of the applicant and some other officers also promotion to supertime scale had been given without completing sixteen years of service. According to Dr Phukan the power to grant rests with the State Government and the Central Government does not come into the picture in giving promotion to supertime scale or cancel or resile the same. Therefore, according to him the cancellation of the promotion to the supertime scale by the Director, Ministry of Personnel was without jurisdiction. In a sense Dr Phukan supports the submission of Mr B.K. Sharma.

8. So far the subsequent case filed in 1998 (O.A.No.16/98) is concerned Mr B.K. Sharma submits that during the pendency of the original application No.225/96 the Director, Ministry Personnel had cancelled the supertime promotion given by the State of Assam. According to Mr B.K. Sharma the Director, Ministry of Personnel had no jurisdiction or authority to cancel the appointment given

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by the State of Assam. Therefore, this impugned order passed by the Director is liable to be set aside.

9. On the rival contention of the learned counsel for the parties it is now to be seen whether the respondent No.3 is competent to withhold the pay slip of the supertime scale so far as the applicant is concerned. In order to decide the same the following points fall for consideration:

- (A) In case of an appointment made by the competent authority whether respondent No.3 has the power, authority and jurisdiction to withhold the payment of salary in the relevant scale of pay.
- (B) Whether the Director, Ministry of Personnel can cancel the appointment made by the State Government competent to promote to supertime scale.
- (C) Whether Rule 3 of the IAS (Pay) Rules, 1954 having not prescribed the number of years the Central Government can prescribe a period by an office memorandum.

10. Point No.A

From the facts available before us it is evident that the State of Assam promoted the applicant to the supertime scale. It is admitted by all that the State has the power to promote an IAS officer to the supertime scale. After the applicant was promoted he assumed charge, but his pay slip of the supertime scale had been refused by the Accountant General on the ground that the applicant was promoted to the supertime scale before he completed sixteen years of service. The question is whether the Accountant General has any jurisdiction and authority to question the appointment given by a competent authority.

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The Accountant General is an officer under the Comptroller and Auditor General. He shall, under such special and general directions as may be given by the Comptroller and Auditor General from time to time, perform such duties and functions, as are imposed on or undertaken by him under the provisions of the Constitution, or of any law made by Parliament. Mr Basumatary has placed before us a copy of the Comptroller and Auditor General's Manual of Standing Orders (Accounts & Entitlements) Vol.I. In page 3 of the said copy of the Manual the duties of the Indian Audit and Accounts Department has been assigned. It reads as under:

"It is essential that an Accountant General should work in close co-ordination with the Government concerned. He is entitled to seek the help of the Finance Ministry/Department in cases of failure of any authority to maintain the prescribed accounts or submit them on the due dates. He may seek their assistance where necessary to secure a satisfactory settlement of outstanding objections of accounting nature."

As per Section 16 of the General Clauses Act if a power is conferred by any Central Act or Regulation to make any appointment, then unless a different intention appears, the authority having the power to make the appointment shall also have the power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

This provision of General Clauses Act suggest that the State Government having the power to appoint to supertime scale has also the power to resile or cancel the said order of appointment. Dr Phukan submits that no other authority can exercise this power of appointment. Mr Basumatary has not been able to show that the Accountant General is vested with that power. Therefore, we are of opinion that this power of appointment can be cancelled by

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the State Government, however, subject to judicial review.

Mr Basumatary also could not produce anything to show that the Accountant General is vested with the power of questioning the appointment given by the State. No doubt if an appointment is made by an authority having no power to make such appointment, the Accountant General, surely, has full power to refuse pay slip.

Considering the entire facts and circumstances we hold that the Accountant General has no authority, right or jurisdiction to refuse pay slip. Therefore, that action of the Accountant General cannot sustain in law.

11. Point No.B

In original application No.16/98 the applicant has challenged the impugned Annexure 5 order dated 27.8.1997 passed by the Director, Ministry of Personnel. It is an admitted fact that the promotion was given to the applicant by the State Government, competent authority to do so. The State Government has the power and that power is allocated as such. In a federal system of Government the powers and functions are well demarcated. When the State Government has been given the power to make the appointment and no such power having been conferred to the Central Government or its officer, in our opinion, the Director, Ministry of Personnel does not have any say in that regard. Besides, it is not the Central Government, but the Director, Ministry of Personnel, who passed the impugned order and that too not in the manner prescribed. We are afraid such type of order is not contemplated under Article 77 of the Constitution. Both Mr G. Sarma and Mr Basumatary have not been able to show that the Director, Ministry of Personnel has been empowered to authenticate such order. Accordingly we are of the view that the said order cannot be sustained in law.

12. Point No.C

We have perused Rule 3 of the IAS (Pay) Rules, 1954. In the first proviso to the said Rule 3 it is specifically mentioned that a member of the Service shall be appointed to the senior scale on his completing four years of service subject to the provisions of Sub-rule (2) of Rule 6A of IAS (Recruitment) Rules, 1954, and to the Junior Administration Grade on completing nine years of service. For selection grade also the number of years has been prescribed. However, for supertime scale no such time is prescribed. From this we feel that the rule making authority was conscious about the number of years required to be served in a particular department to get promotion and consciously has refrained from prescribing any time for supertime scale. Therefore, it can be very safely said that the rule making authority has not insisted on the number of years to get the supertime scale promotion. It is an established principle that there is no presumption that legislature omits to do something. The following passage at page 33 of Maxwell's Interpretation of Statutes, Twelfth Edition may be quoted:

"It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do." "We are not entitled," said Lord Loreburn L.C., "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself." A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it could have been omitted, and the omission appears in consequence to have been unintentional."

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This principle is also applicable in case of rules. Moreover, the IAS (Pay) Rules, 1954 has not delegated any power to the Government to add something which is not in the rule. In this connection reference can be made to the Full Bench decision of this Tribunal in Dr Bhupinder Singh, IPS -vs- Union of India and others. In the said case similar questions came up for consideration. The question was whether the instructions override the provisions of Rule 3(2A) of the IPS (Pay) Rules, 1954. The Full Bench observed as follows:

".....The question is whether these instructions override the provisions of Rule 3(2A) of the IPS (Pay) Rules, 1954. The law appears to be quite settled that executive instructions cannot supersede the statutory rules. It has been held by the Supreme Court in the case of Sant Ram Sharma v. State of Rajasthan and others, which has been followed in subsequent cases that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed....."

It was further observed as follows:

".....Now, by the administrative instructions issued by the Government of India in 1986 and 1988 an addition has been made within the heading 'zone of consideration' that such persons who would be eligible for promotion to the post of Director General must have put in at least four years service in the rank of Inspector General of Police and must have completed thirty years of service. The question is whether such instructions though given under the heading 'zone of consideration' amend or alter the conditions of service."

After considering various cases of the Apex Court, the Full Bench decided as follows:

"Considering the ratio of the decisions as cited above, we are constrained to hold that by issuing administrative instructions to the effect that only those IPS officers who have held the post of Inspector General of Police at least for a period of four years and who have completed 30 years of service in the Police Force are eligible for promotion to the post of Director

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General of Police, the Government of India have in fact put some restrictions and limitations on the provision of Rule 3(2A) of the IPS (Pay) Rules, 1954. On the basis of Rule 3(2A) of the IPS (Pay) Rules, 1954, an IPS officer who has entered the 14th year of service shall be eligible for being considered for appointment to the post in Selection Grade and promotions after that would be made if he is found suitable by selection on merit with due regard to seniority. On the basis of the administrative instructions in 1986 and 1988 all police officers, in addition to the conditions laid down in the said rule, must have put in 4 years of service in the rank of Inspector General of Police and must have completed 30 years of service for being considered for appointment to the post Director General. We hold that such restrictions and limitations, not being consistent with the said rules, these cannot be sustained."

Considering the above we are of the view that Central Government cannot prescribe a period by an office memorandum.

13. In view of the above we allow the applications by setting aside the Annexure 5 order dated 27.8.1997 in Original Application No.16/98 cancelling the appointment by the respondent No.3 and also we hold that respondent No.3 in Original Application No.225/96 had no jurisdiction or authority to refuse issuance of pay slips. Accordingly we direct respondent No.3 in Original Application No.225/96 to issue pay slips as the applicant was eligible on promotion to supertime scale.

14. Both the applications are accordingly disposed of. Considering the facts and circumstances of the cases we make no order as to costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMIN)