

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

original Application No.446 of 1999

Jabalpur, this the 13th day of February, 2004

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri G.Shanthappa - Judicial Member

Raghuveer Shrivastava S/o Deendayal Shrivastava,
aged about years, Member of the Indian Adminis-
trative Service, presently posted Director, Public
Grievances O/o Mantralaya, Bhopal - APPLICANT

(By Advocate - None)

Versus

1. Union of India, through Secretary, Personnel, Public Grievances and Pension, Deptt. of Personnel & Training, North Block, New Delhi.
2. State of Madhya Pradesh Through the Chief Secretary, General Administration Deptt., Govt. of M.P., Mantralaya, Bhopal.
3. Shri S.C.Mishra, Collector, Umariya (M.P.).
4. Shri V.M.Upadhyay, Collector, Sidhi (M.P.).
5. Shri M.K.Varshney, Collector, Bhind (M.P.).
6. Shri Arun Tiwari, Competent Authority Urban Land Ceiling, Durg (M.P.).
7. Shri R.S.Vishwakarma, Deputy Secretary (Finance), Finance Department, Mantralaya, Bhopal.
8. Shri S.K.Mishra, Chief Executive Officer, District Panchayat, Gwalior (M.P.).
9. Smt.Sudha Choudhary, Director, Gramin Rojgar, Bhopal - RESPONDENTS

(By Advocate - Shri K.C.Ghildiyal for respondent-State Govt.
None for remaining respondents)

O R D E R

By M.P.Singh, Vice Chairman -

In this Original Application the applicant has sought a direction to quash the orders dated 23.4.1999 (Annexure-A[¶]6) and dated 14.6.1999; declare the year of allotment of the applicant as 1991; and direct the respondents to recalculate the year of allotment of respondents 3 to 9.

2. The brief facts of the case are that the applicant was recruited to State Civil Service as Deputy Collector and he joined the said post on 27.6.1979. Being a member of the State Civil Service, he was eligible for being

considered for appointment to the Indian Adminis-
trative Service.

Service (for short 'IAS') in accordance with the IAS (Recruitment) Rules, 1954 and IAS (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as 'the Promotion Regulations'). The case of the applicant was considered in accordance with Regulation 5 of the Promotion Regulations, and a select list of 10 officers was approved in consultation with the UPSC in March, 1996. The names of following State Civil Service officers appeared in the select list-

1. Shri T.S. Tomar,
2. Shri M.S. Painkara,
3. Shri Awadh Bihari
4. Shri Mansharam Thakur
5. Shri Durgesh Chandra Mishra
6. Shri Satish Chandra Mishra - respondent no. 3
7. Shri Vishwa Mohan Upadhyaya - respondent no. 4
8. Shri M.K. Varshney - respondent no. 5
9. Shri Arun Tiwari - respondent no. 6
10. Shri Raghuvir Shrivastav - applicant

These officers were appointed to IAS on various dates. The appointment of the applicant was notified by the Government of India on 12.3.1997. On the basis of the notification issued by the respondent no. 1 in accordance with Rule 3 of IAS (Regulation of Seniority) Rules, 1987 (hereinafter referred to as 'the Seniority Rules') the applicant was assigned 1991 as the year of allotment.

2.1 In the same year of 1996, a selection was held for considering the cases of persons not belonging to the State Civil Services, in accordance with IAS (Appointment by Selection) Regulations, 1956 (hereinafter referred to as 'the Selection Regulations'). The selection committee constituted by UPSC selected three persons for appointment by selection to the IAS. They are respondents 7, 8 & 9. The names of respondents 7 to 9 have been placed below the applicant in the gradation list of IAS in accordance with Rule 3 of the Seniority Rules. Respondent no. 8 who was appointed in the IAS in accordance with the Selection Regulations had submitted a representation to respondents 1 and 2. The applicant was not aware of the said representation submitted by respondent no. 8. According to the applicant, the

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respondent no.1 did not grant any opportunity to the applicant and without supplying a copy of the representation of respondent no.8 have changed the year of allotment of the applicant from 1991 to 1992 vide order dated 23.4.1999. The said order, changing the seniority of the applicant by respondent no.1, was communicated to the applicant by the State Government vide their order dated 14.6.1999. The applicant submitted a detailed representation to the State Government on 18.6.1999(Annexure-A-7). The contention of the applicant is that respondents 3 to 6 as well as the applicant had joined the State Civil Service in June, 1979 and their appointment to IAS was notified in between August 1996 and March 1997. Thus, the total period served by the applicant and respondents 3 to 6 comes to 17 years and few months. The applicant has stated that as per Rule 3 of the Seniority Rules, the weightage of four years is granted for first 12 years in the State Civil Service and subsequently one ^{year} weightage for every completed three years of service is granted subject to the maximum weightage of five years. Since respondents 3 to 6 are from the same batch of the State Civil Service and had completed 17 years of service, therefore, they were assigned 1991 as the year of allotment along with the applicant. The respondent no.1, according to the applicant, had changed the year of allotment of the applicant alone to 1992, thus discriminating him from similarly situated officers of the State Civil Service, which is arbitrary illegal and cannot be sustained in law. Aggrieved by this the applicant has filed this OA.

3. Replies have been filed by the respondent-State Government and by the private-respondents. The respondent-VOI have not filed their reply despite being given several opportunities. This is a very old case of 1999. We are, therefore, deciding this OA in the absence of reply of respondent-VOI.

4. None was present on behalf of the applicant, respondent no.1 and private-respondents. Only counsel for respondent-State Government was present at the time of hearing. Since it is an old case of 1999, we proceed to dispose of it by invoking the provisions of Rules 15 & 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

5. The learned counsel for respondent-State Govt. has stated that the applicant was appointed to the IAS by promotion from SCS vide Govt.of India, Ministry of Personnel, P.G.&Pensions' Notification dated 12.3.1997 (Annexure-R-2/1) and assigned 1991 as the year of allotment vide notification dated 13.5.1997(Annexure-R-2/2) for the purpose of fixation of inter se seniority amongst similarly appointed SCS officers. One Shri S.K.Mishra, an IAS officer appointed by selection, had submitted a representation (Annexure-R-2/3) against the said notification dated 13.5.1997 assigning the year of allotment of 1991 to the applicant. The representation of Shri Mishra was forwarded to the Govt.of India on 26.3.1999 for consideration. The Govt.of India while considering the representation of said Shri Mishra observed that the year of allotment 1991 assigned to the applicant was not as per the provisions of Rule 3(3)(ii) of the Seniority Rules and refixed the year of allotment of the applicant as 1992, for the reasons mentioned in the order dated 23.4.1999 (Annexure-R-2/4). The learned counsel for respondent- State Government has submitted that there was a discrepancy in the computation of year of allotment of the applicant with reference to actual number of years of service rendered by him in the State Government and the fixation of his year of allotment in IAS in earlier communication dated 13.5.1997. Hence the same was rectified by assigning 1992 as the year of allotment to the applicant vide letter dated 23.4.1999.

He has also submitted that as per the Seniority Rules, it is within the domain of the Central Government to grant seniority and fix the year of allotment of State Civil Service Officers who are appointed under the Promotion Regulations.

6. We have given careful consideration to rival contentions of the parties and perused the pleadings. We find that the applicant, who was a member of the State Civil Service was considered for appointment to IAS under the Promotion Regulations. His name was included in the select list for the year 1995-96. He was appointed to IAS on 12.3.1997. The Department of Personnel & Training had allotted him the 1991 year of allotment vide notification dated 13.5.1997. The respondent no.8 Shri S.K.Mishra who is a non-SCS officer and appointed to the IAS on the basis of the select list of the year 1995-96 had made a representation pointing out that the applicant has put in a total of 17 years, 9 months and 16 days service in the State Civil Service. In other words, he had not completed 18 years State Civil Service and he was, therefore, not eligible for grant of weightage of six years while fixing his seniority under the Seniority Rules. His representation was forwarded by the State Government to the Central Government-respondent no.1. The respondent no.1 vide order dated 23.4.1999 has rectified the mistake and assigned 1992 year of allotment instead of 1991. While issuing that letter dated 23.4.1999 they have stated that "in terms of the information furnished by the State Government, service in the post of Deputy Collector or equivalent by the officer was commenced from 27.6.1979 and thus he had completed 17 years of service in the State Civil Service. In terms of Rule 3(3)(ii) of the IAS (Regulation of Seniority)Rules,1987 as amended on 3.2.1988, he could be allowed 5 years of weightage and

thus eligible to be assigned year of allotment as 1992 only". It is further stated by them in the order dated 23.4.1999 that S/Shri Dinesh Kumar Shrivastava, K.M.Gautam, L.N.Suryavanshi and Omesh Mundara, who were included at Sl.No.1-4 of the 1996-97 select list and promoted to the IAS in the year 1997 were assigned 1991 as their year of allotment vide their letter dated 15.10.1997 read with letter dated 31.3.1998. In view of the fact that the last SCS officer appointed to IAS from the 1995-96 select list, Shri Raghuvir Shrivastava was eligible to be assigned only 1992 as the year of allotment, these four officers cannot be assigned year of allotment higher than 1992 with due regard to the proviso to Rule 3(3)(ii) of the Seniority Rules, which was upheld by the Hon'ble Supreme Court in Indian Administrative Service (SCS) Association Vs. Union of India and others, 1993 SCC(L&S)252. It has been further stated in the said letter that "in view of the factual position explained in the preceding paragraphs, in supersession of the decisions conveyed in GOI letters dated 13.5.1997, 16.10.1997 and 31.3.1998, the year of allotment of S/Shri Raghuvir Shrivastava, Dinesh Kumar Shrivastava, K.M.Gautam, L.N.Suryavanshi and Omesh Mundara are refixed as 1992. For the purpose of inter-se seniority the officers will be placed en-bloc below Ms.Kalpana Shrivastava, IAS(RR:1992) and above Shri Pradeep Kumar Khare, IAS(SCS:1992).

7. The seniority and year of allotment of SCS officers who are appointed to IAS on the basis of the Promotion Regulations is governed by Rule 3(3)(ii) of the Seniority Rules, which is as follows -

"The year of allotment of a promotee officer shall be determined in the following manner-

(a) For the service rendered by him in the State Civil Service upto twelve years, in the rank and not below that of a Deputy Collector or equivalent he shall be given a weightage of four years towards fixation of the year allotment.



(b) he shall also be given a weightage of 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 this calculation, fractions are to be ignored.

(c) The weightage mentioned in 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 be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier Select List."

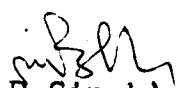
7.1 It is not in dispute that the applicant has been appointed to State Civil Service on 27.6.1979 and he has been appointed to IAS on 12.3.1997. The total service rendered by the applicant in the State Civil Service is therefore less than 18 years. As per the rules quoted above, the applicant will be given a weightage of four years for 12 years of service rendered by him in the State Civil Service and thereafter he will be given a weightage of one year for every completed three years of service beyond the period of 12 years. In the calculation fractions are to be ignored. Since the applicant has not completed 18 years of service, he could not be given the weightage of six years. At the most, he could be given the weightage of five years. Since he was appointed in the year 1997 he has been given the weightage of five years and assigned the year of allotment 1992. The mistake earlier committed by the respondent no.1 while fixing his seniority and year of allotment has been rectified by them and his year of allotment has been correctly fixed by them vide their letter dated 23.4.1999.

7.2 As regards the contention of the applicant that he has been discriminated ^{against him} because other State Civil Services officers who were his batchmates, who joined in 1979 & have been assigned the 1991 year of allotment, is baseless and without any merit. All the 9 officers in the select list of 1995-96 who were senior to him and were placed in the select

list above him were appointed to the IAS during the year 1996 and were, therefore, after giving them the benefit of five years were rightly assigned the year of allotment 1991. Therefore, the submission of the applicant regarding discrimination is not tenable and rejected.

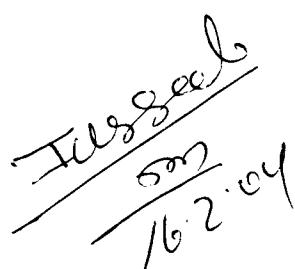
8. In view of the above analysis of facts and the reasons recorded, the OA is found to be without any merit and is accordingly dismissed. In the facts and circumstances of the case, the parties are directed to bear their own costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.

पृष्ठांकन सं ओ/व्हा..... जवाहरलाल नियमित
यांत्रिकीय विभाग
(1) लोकालय विभाग, नियमित, जलालपुर
(2) लोकालय विभाग, नियमित, जलालपुर
(3) लोकालय विभाग, नियमित, जलालपुर
(4) लोकालय विभाग, नियमित, जलालपुर
सूचना एवं आवश्यक विवरण: द्वारा
A.G.Dhankar
K.C. Chhildiyal
Bijender Singh
Report on PIB
उप सचिव राजस्व विभाग
Manoj Shekhar


6/2/04
16/2/04