

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1366/2014

Reserved on : 18.11.2015.

Pronounced on : 01.12.2015.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Mr. Vinod Ashwini Saxena,
Aged about 45 years,
S/o Mr. V.P. Saxena,
R/o H.No. 2-B, Block-255,
Panchkuian Road, Railway Officers
Colony, Basant Lane, Connaught Place,
New Delhi-1,
Presently working as Director in the
Cabinet Secretariat, Room Number-7,
Bikaner House Annexe, Shahjahan Road,
New Delhi-11.

..... Applicant

(through Ms. Moisha Honda with Ms. Mahima Sareen with Sh. A.K. Tandon,
Advocate)

Versus

1. Union of India through
the Secretary(R),
Cabinet Secretariat, Room Number 7,
Bikaner House Annexe, Shahjahan Road,
New Delhi-11.
2. Mr. Dharmendra Bhargava Director,
Cabinet Secretariat, Room Number 7,
Bikaner House Annexe, Shahjahan Road,
New Delhi-11.
3. Mr. Siddharth Zutshi, Director,
Cabinet Secretariat, Room Number 7,
Bikaner House Annexe, Shahjahan Road,
New Delhi-11.

..... Respondents

(through Mr. Rajinder Nischal, Ms. Geetanjali Sharma, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant appeared for Indian Engineering Services (IES) Examination
(now called Central Engineering Services (CES)) in the year 1992 and was

selected to join CPWD. He joined the allotted department on 07.02.1994. Before that he appeared again for Civil Services (Main) Examination in 1993. He was selected for Indian Civil Accounts Service (ICAS) and joined the same on 05.10.1994 after submitting his technical resignation from CPWD. On 01.10.1996, his willingness was sought for appointment to Research and Analysis Services (RAS). By the aforesaid communication (Page-29 of the paper-book), he was also informed that under the Scheme prevalent for direct recruitment to RAS, original seniority of the officer selected shall be protected in RAS. According to the applicant since at that time IES was not a feeder service for RAS, the applicant's seniority of ICAS was only protected and he was allotted 1994 batch in RAS. Later on, in 2013 the applicant came to know that certain officers in the Cabinet Secretariat, who had been recruited from Central Power Engineering Service based on an advertisement published in the Employment News for the week 12.05.2012 to 18.05.2012 were included in the list of officers eligible for appointment in RAS. With the inclusion IES also as a feeder service to RAS one such officer, namely, Mr. Dharmendra Bhargava, respondent No.2 herein who was a recruitee of 1993 IES Examination, was given seniority ahead of the applicant. The contention of the applicant is that he was senior to respondent No.2 in IES having been recruited in the same through the 1992 Examination and, therefore, deserved to be placed above respondent No.2 if his seniority in RAS was fixed after taking into account his seniority in the IES. The applicant made a representation to the respondents on 30.05.2013 for rectification of this mistake and conferment of seniority and batch after counting his services in the IES. The respondents have, however, rejected his representation by the impugned order dated 28.10.2013. Hence, he has filed this O.A. before us seeking the following relief:-

“(a) Quashing and Setting aside of respondent no.1's communication dated 28.10.2013, with all consequential reliefs and benefits;

(b) Directing respondent no.1 to allot/fix seniority to the applicant in 'RAS' according to his year of batch allotment in IES/CES-CPWD'as 1993 as has been done in the case of respondent no.2; with all consequential reliefs and benefits;

(c) Costs of this application may also be granted to the applicant;

(d) Any other or further order or direction to grant complete relief to the applicant.”

2. The contention of the applicant is that the action of the respondents in denying him seniority asked for by him was wrong, illegal, discriminatory and violative of the Constitution. The respondents have failed to appreciate that IES has been included as an eligible service for recruitment to RAS and after such inclusion denying him the benefit of the services rendered by him in IES even though the same has been allowed to his juniors, was unjustified. He has stated that in the past allotment of batch of several officers has been revised by the respondents and the law should be applied similarly for all. The applicant has relied upon the following judgments:-

- “(i) **J.K. Ojha Vs. UOI** (OA Nos. 2200/1999, 1434 & 1506/2000) decided on 28.08.2001.
- (ii) **Raghav Prasad Bhatnagar Vs. UOI** (OA No. 251/2005) decided on 18.08.2005.
- (iii) **Sanjiv Singh Vs. UOI** (OA No. 1920/2005) decided on 30.01.2006.
- (iv) **WP(C) No. 9566/2006, UOI Vs. Raghav Prasad Bhatnagar** decided on 02.06.2006.”

In the aforesaid cases, the Courts have directed the respondent Cabinet Secretariat to grant benefit of past services rendered by the applicants therein in other Group-A Services for the purpose of seniority.

3. In their reply, the respondents have not disputed the facts of the case as stated above. They have, however, submitted that when the applicant was recruited to RAS, he had never mentioned about his earlier service rendered in

IES from 07.02.1994 to 03.10.1994 in the application form. He had only mentioned that he belongs to ICAS of 1994 batch. Accordingly, in pursuance of Para-2(b) of Rule-24 of R&AW (RC&S) Rules, 1975, he was allotted 1994 as year of allotment commensurate with his year of allotment in ICAS. Respondents have further stated that his previous service in IES was counted as qualifying service for pensionary benefits only in terms of Rule-26(2) of CCS (Pension) Rules and not for the purpose of year of allotment in RAS.

4. We have heard both sides and have perused the material on record. We find that the stand taken by the respondents to be self contradictory. While on the one hand they have stated that when the applicant was recruited to RAS, he did not mention in the application form regarding the services rendered by him in IES, on the other hand, they have stated that applicant's services in IES have been counted only for the purpose of pensionary benefits. It is obvious that it is on the record of the respondents that the applicant did work in IES before joining ICAS. Since it is not denied that IES has now become a feeder service for RAS, then as per RAS Rules, there is no justification in not taking into account services rendered in IES for the purpose of year of allotment as well.

5. One other issue that we have considered is the delay in asking for this relief by the applicant. He has explained that due to the secret nature of working of RAS, it was only in 2013 that he came to know that IES had also become a feeder service to RAS. Further, in their sur rejoinder, the applicants themselves have admitted that the only person to be affected by re-fixation of applicant's seniority was respondent No. 2 Mr. Dharmendra Bhargava but that respondent was not a member of RAS nor had he been permanently seconded to RAS. As such, he was not in the reckoning for next promotion to the rank of JS. In other words, if the relief asked for by the applicant is granted, no third

party rights will be affected. Hence, despite the delay, we are inclined to grant the relief asked for by the applicant.

6. Accordingly, this O.A. is allowed and the respondents' communication dated 28.10.2013 is quashed and set aside. Respondent No.1 is directed to allot/fix seniority of the applicant in RAS taking into account his year of allotment in IES within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/