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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1012/2003

New Delhi, this the 15th day of January, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member (A)

K. Ilango (I.P.S.)
S/o Brig. (Retd.) O.P.K. Pillai,
Presently posted as Director, Cabinet Secretariat
Bikaner House Annexe,
Shahjahan Road,
New Delhi

...Applicant

(By Advocate: Shri K.K. Patel)

Versus

Union of India, through

1. Secretary, R&AW,
Cabinet Secretariat,
Govt. of India,
New Delhi
2. Special Secretary (SR)
Cabinet Secretariat,
Bikaner House Annexe,
Shahjahan Road,
New Delhi.
3. Home Secretary,
MHA, North Block,
New Delhi.
4. Secretary, DoP&T,
MHA, North Block,
New Delhi.
5. Smt. Prabha H. Rao,
Director, Cabinet Secretariat,
Bikaner House Annexe,
Shahjahan Road,
New Delhi.

.... Respondents

(By Advocate: Shri Madhav Panikar)

ORDER

Justice V.S. Aggarwal:-

Applicant (K. Ilango) joined the Indian Police Service in the year 1982. In the competitive

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examination, respondent No.5 who also was in the Indian Police Service, was junior to the applicant. In the year 1992, the applicant was selected for Central Government deputation in external intelligence agency of the country, namely, Research and Analysis Wing (RAW). He joined the Cabinet Secretariat on deputation in July 1992. The respondent No.5 was already on deputation in the same wing when the applicant joined. In the year 1997, the applicant was asked to intimate his willingness for being considered for appointment in the Research and Analysis Service (RAS) under a special recruitment scheme. On receipt of the said offer, the applicant had given his willingness for being considered to be appointed. The letter did not indicate the name of the persons who had already been absorbed in the cadre. Subsequently, the applicant was informed that the Selection Board had met and recommended the applicant's appointment in RAS. The letter indicated in general terms that the new inductees will be placed below the existing members of the service belonging to a particular batch. On 13.1.2000, the applicant was appointed to Grade IV of RAS. The provisional year of allotment was mentioned as 1982. The grievance of the applicant is that respondent No.5 who had been inducted in the service in the year 1982, is being shown senior to him. This is contrary to the relevant rules and, therefore, by virtue of the present application, he seeks setting

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aside of the letter of the respondents dated 19.6.2002 rejecting his request in this regard. He also claims that Rule 24 (2)(c) of the Research and Analysis Wing (RC&S) Rules, 1975 (for short, "the Rules") is contrary to Articles 14 and 16 of the Constitution and should be quashed. Resultantly, he prays that he should be placed senior to respondent No.5.

2. The contest has been offered by the official respondents. It has been pleaded that the said recruitment scheme was approved by the Government in 1988 for induction of 32 officers of RAS in the Senior Time Scale particularly with seniority of the years 1977 - 1984. At the initial stage, 18 officers of the requisite seniority were inducted through this Scheme. Later in April, 1991 with a view of augment the cadre, it was decided to hold a second round of induction for remaining slots with the approval of the Government. The Selection Board met on 3.12.1992. It recommended the induction of 5 officers including respondent No.5. After these persons were inducted, action was taken in 1997 to fill up the remaining vacancies. The applicant had opted. The Board had recommended the induction of the applicant and 5 more officers. The seniority of the applicant was fixed in accordance with Rule 23 of the Rules below respondent No.5. It mentioned that officers belonging to All India/Central Services will have the same year of allotment as in their parent service. The Rule

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specified that the inter se placement of officers having the same year of allotment shall be according to their date of appointment in RAS. It is in this backdrop that it is contended that the applicant had been placed junior to respondent No.5.

3. It is thus an admitted fact that the respondent No.5 had joined the RAS and was absorbed in it before the applicant. It is also an admitted fact that in his parent cadre, respondent no.5 was junior to the applicant. The applicant, therefore, contends that in terms of Rule 23 of the Rules, he should be placed senior to respondent No.5.

4. Reliance on behalf of the applicant is placed on Rule 23 of the Rules which reads:

"23. Determination of inter se seniority:

(1) The inter se seniority of the members of the Service in each grade shall be determined by fixing a year of allotment for each of them.

(2) The year of allotment will be determined as follows:

(a) In the case of officers belonging to the Indian Administrative Service, the Indian Police Service, the Indian Foreign Service and Indian Frontier administrative service; their year of allotment in the Research and Analysis Service will be the same as their years of allotment in their respective Services immediately before their absorption in the service. Provided, that if by reason of their age they would not have been eligible to take the examination for the Indian Administrative Service or the Indian Foreign Service in the year immediately preceding their year of allotment, their year of allotment would be the year immediately following the earliest

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year in which they would have been eligible to take their examination.

(b) In the case of officers belonging to other All India Services and Central Services Class-I recruitment to which is made through competitive examination, their year of allotment in the Research & Analysis Service shall be the year of their allotment in the service to which they belonged immediately before their absorption in the Research & Analysis Service, or if there is no year of allotment, the year in which the officer joined the Class-I Service.

(c) In the case of personnel belonging to other civil Services, the notional year of allotment shall be calculated by all their Class-I Service on a pay of Rs. 700 in the scale immediately before 1.1.73 half of Class-I Service on a salary below that amount and half of all Class-II (Gazetted) service. This rule will also apply to permanent officer transferred from the Intelligence Bureau.

(d) For the Defence Service Officers the notional year of allotment shall be the year promotion in the Defence Service to the rank required for appointment to the grade in which they are permanently absorbed minus the minimum number of years laid down for Class-I Service Officers in rule 22 for appointment to that grade plus two years or the year of Commissioned Service after the age of 21, whichever is later.

Illustration: In case of a Brigadier who is considered for absorption as Director against Grade IV, if he attained the rank of Brigadier in 1972 his notional year of allotment shall be 1972 - (14 + 2) i.e. 1956. Provided, however, the notional year of allotment arrived at shall not be earlier than the year of allotment of the Junior-most Officer appointed permanently to the next higher grade of the Service at the time of its initial constitution.

(e) The year of allotment for officer who have already been recruited to the junior scale at the time of the initial constitution of the service will be the year in which they were so recruited. Their inter-se seniority will be as determined by the Selection Board at the time of their recruitment.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the Government may, on the recommendation of the Selection Board, after the notional year of allotment in the

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Service in cases of special merit.

(4) (a) Save as provided in sub-rule 2(e), if the year of allotment is the same in respect of more than one member of the Service, their inter-se seniority will be determined in the following order:

(i) Indian Administrative Service/Indian Foreign Service.

(ii) Indian Frontier Administrative Service

(iii) Indian Police Service (iv) Other All India Services (v) Central Service Class-I

(b) The inter-se seniority of officers belonging to Central Services Class-I recruited from different competitive examinations in the same year will be determined in accordance with the date of their entry into the Class-I Service."

Simultaneously the learned counsel also assails Rule 24 (2)(c) of the Rules to be violative of Articles 14 and 16 of the Constitution.

5. Perusal of Rule 23 clearly shows that inter se seniority of the members of the service has to be determined by fixing a year of allotment for each of them. In the case of Indian Police Service officers, the year of allotment will be the same as their years of allotment in their respective services immediately before their absorption, but a bare reading of the same further reveals that the persons who are otherwise absorbed in the service would rank senior even if they were junior in their parent department to the new inductees. If they are inducted in the RAS before a particular person and many years before the new inductee, the junior necessarily in the new service

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will be senior. This Rule will only come into play if they were inducted in the same year. In that event, the year of allotment will have a say.

6. Any other interpretation would result in fluctuating the fortunes of seniors. A person who had joined the RAS may cease to become senior even after 20 years of his being so inducted if any other person senior to him in his service is so inducted. Therefore, it must be held on reading of Rule 23 of the Rules that the year of allotment and the question thereto would only arise when both the persons are taken into RAS in the same year.

7. So far as the validity of Rule 24(2)(c) is concerned, we find that it clearly prescribes that inter se placement of inductees shall be below the existing member of the year of allotment. The learned counsel contends that this is illegal and violative of Articles 14 and 16 of the Constitution.

8. We find that the said plea is without any force. Options are being called before a person is inducted in the RAS. If at the relevant time, the senior person does not care and opts for induction in the new service later than his junior, the senior cannot contend that his seniority must be retained and the rule if it prescribes otherwise inflicts his right of proper promotion. There is no inequality nor there



is any denial of opportunity. A person gets himself inducted into the new service at his own sweet will. In such a situation, Articles 14 and 16 will have no role to play.

9. There is another way of looking at the matter. Before the applicant had been inducted in the said service, his option had been called vide the letter of 5.12.1997. Para 2 of the same reads:

"2. It is proposed to consider you for appointment to the RAS under the above scheme. The general features of the scheme are as under:

i) The year of allotment would be granted in the RAS under Rule 23 of R&AW (RC&S) Rules, 1975.

ii) Inter-se-placement of officers having the same year of allotment shall be according to the date of their appointment to the RAS. In the case of two officers belonging to different services having been appointed on the same date, the inter-se-precedence shall be decided in accordance with Rule 23. Those already appointed to service in a particular year of allotment would rank senior to those inducted to later date.

iii) Those appointed to RAS would be required to resign from parent Service."

The applicant had given his consent. In other words, the applicant had been informed that those already appointed in the service would rank senior to those inducted on a later date. The applicant was thus made aware of the situation and he still opted. Now to contend that he did not know that respondent No.5 had already been inducted in the said service would not be

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of any avail. If he had any doubt, he could have made enquiries before giving the option. Thus neither law nor equity will be in favour of the applicant. He had voluntarily offered and the pleas, therefore, which are put forward must be held to be without merit.

10. Resultantly, the application being without merit must fail and is dismissed. No costs.

Naik
(S. K. Naik)
Member (A)

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(V. S. Aggarwal)
Chairman