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UNION OF INDIA

v.

S.S. UPPAL AND ANR.

JANUARY 9, 1996

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[A.M. AHMADI, C.J. AND SUHAS C. SEN, J.]

Service Law :

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Indian Administrative Service (Recruitment) Rules, 1954; Indian Administrative Service (Regulation of Seniority) Rules, 1987 (as amended by Notification dated 3.2.1989).

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R.8(2)/Rules 2, 3 (3) (iii)—Appointment to IAS against quota of non-State Civil Service Officers—Fixation of seniority—Year of allotment—Held, year of allotment and seniority of an officer appointed to IAS to be determined according to seniority rules applicable on date of appointment to the service—Fixation of seniority in IAS follows appointment to Service—Date of occurrence of vacancy has to relevance for purpose of fixation of seniority—Mere inclusion of name in panel does not confer on candidate any right of appointment.

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Respondent no.1, an officer in the Commerce and Industry Department of State of Madhya Pradesh, was considered suitable for absorption in the Indian Administrative Service cadre against the quota of non-State Civil Service Officers, under Rule 8(2) of the Indian Administrative Service (Recruitment) Rules, 1954. A panel of four officers was prepared in which the name of respondent no. 1 was placed at serial no. 4 for appointment against the vacancy arising on 1.2.1989. But the vacancy was not filled up on the said date and the respondent was appointed against the said vacancy in the Indian Administrative Service on 15.2.1989. Meanwhile on 3.2.1989 the provisions of the Indian Administrative Service (Regulation and Seniority) Rules were amended.

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The respondent filed an application before the Central Administrative Tribunal challenging Rule 2 of the Amendment Rules 1989 as *ultra vires* articles 14 and 16 of the Constitution, and claimed his seniority from the date of vacancy i.e. 1.2.1989 in accordance with the rules in force on that date. The Tribunal allowed the application holding that the vacancy

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in the promotional post occurring prior to the amendment had to be filled

up in accordance with the unamended rules, and seniority was to be determined in accordance with the rules prevalent on the date the promotion became due. It directed the Union of India to reassign the year of allotment to the respondent in accordance with 1987 Rules.

In the present appeal filed by the Union of India, it was contended for the appellant that a Government servant is governed by the rules in force at the time of his appointment in the service and not by those in force prior to his appointment, and since the respondent was appointed on 15.2.1989, his seniority was determined taking into consideration the revised formula which came into force on 3.2.1989.

Allowing the appeal, this Court

HELD : 1.1. Seniority of an officer appointed to the Indian Administrative service is determined according to the seniority rules applicable on the date of appointment to the Service. Fixation of seniority in the Indian Administrative Service is done only after an officer is appointed to the Service. The year of allotment in the IAS will have to be determined according to the provisions of seniority rules in force at the time of appointment of the officer. [237-H, 236-A]

1.2. Appointment to IAS after inclusion of the name of the candidate in the select list is not automatic. Mere inclusion of the name in the panel does not confer any right of appointment. The State Government as well as the officer concerned have to go through certain formalities before the actual appointment is made. The date of occurrence of vacancy has really no relevance for the purpose of fixation of seniority in the IAS. Weightage in seniority cannot be given retrospective effect unless it was specifically provided in the rules in force at the material time. The Central Government is competent to amend the seniority rules from time to time keeping in view the exigencies of administration. [236-C-B]

1.3. The question of seniority of respondent no. 1 has to be determined by the rules in force on the date of his appointment to the Indian Administrative Service. After the vacancy had arisen on 1.2.1989, a proposal of appointment of respondent no. 1 to IAS from the State Government was put up on 14.2.1989. Thereupon he was promoted and thus actually inducted into IAS on 15.2.1989. The revised seniority rules that came into force on 3.2.1989 will clearly apply to his case. There has been no infraction of any rule or violation of any instruction issued by the Government. It cannot be

A said that there was unusual delay in appointing the respondent to IAS by which he could be said to have been prejudiced. [235-H, 236-D]

Shankarasan Dash v. Union of India, JT (1991) 2 S.C. 380, relied on.

B *Y.V. Rangaiah v. J. Sareenivasa Rao*, AIR (1983) SC 852 & *S.L. Kaul and Others v. Secretary to Government of India*, [1989] Supp. 1 SCC 147, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1492 of 1996.

C From the judgment and order dated 12.1.95 of the Central Administrative Tribunal, Jabalpur in O.A. No. 310 of 1994.

V.R. Reddy, Additional Solicitor General, K.N. Shukla, Ms. Shashi Kiran and Ms. Anil Katiyar for the Appellant.

D P.P. Rao, Ms. Vimal Sinha, Yunus Malik, L.R. Singh for the Respondents.

The Judgment of the Court was delivered by

SEN, J. Special leave granted.

E Shri S.S. Uppal was appointed as Development Officer under the Commerce and Industry Department of State of Madhya Pradesh. Thereafter, he was promoted to the post of Joint Director of Industries on 2nd July, 1982. In August, 1988, he was considered suitable for absorption in Indian Administrative Service cadre against the quota of non-State Civil Service Officers under Rule 8(2) of the Indian Administrative Service (Recruitment) Rules, 1954. A panel of four suitable officers was prepared after taking into account the vacancies which were due to arise on 1st October, 1988 (two vacancies), on 1st December, 1988 (third vacancy) and on 1st February, 1989 (fourth vacancy). Uppal was placed at S. No. 4 in the panel and, therefore, was not considered for filling up the vacancies that arose on 1st October, 1988 and on 1st December, 1988. He could only be considered for appointment to the vacancy which arose on 1st February, 1989. This vacancy, however, was not filled up immediately. It was only on 15th February, 1989 that S.S. Uppal was appointed to the Indian Administrative Service. In the meantime, on 3rd February, 1989 the provisions of Indian Administrative Service (Regulation of Seniority) Rules, 1987 were amended.

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S.S. Uppal, the respondent No. 1 herein, made an application before the Central Administrative Tribunal, Jabalpur, claiming that Rule 2 of the Amendment Rules of 1989 was *ultra vires* and was hit by articles 14 and 16 of the constitution of India. He further contended that in any event he was due for appointment to the vacancy on 1st February, 1989. Therefore, his seniority must be as of the date of vacancy on 1st February, 1989 and in accordance with the rules in force on that date. The delayed appointment could not, in any way, take away the right that had accrued to him on 1st February, 1989, the date on which the vacancy arose.

It may be mentioned that the first three persons in the panel, B.N. Singh, M.A. Khan and V.K. Dalela, were appointed by promotion to IAS on 25.10.1988, 25.10.1988 and 16.12.1988 respectively. Their seniority was determined in accordance with the I.A.S. (Regulation of Seniority) Rules, 1987. The petitioner occupied the fourth position in a panel which was prepared in August, 1988. Since his appointment to the service was made on 15.2.1989, his seniority was determined under the amended rules of 1989. He made a representation on 20th January, 1990 by presenting a memorial to the President of India, which was rejected by an order dated 4th February, 1994. The petitioner considered that his memorial dated 20th June 1990 was wrongly rejected and he challenged the validity of the amendment rules of 1989 and fixation of his seniority before the Central Administrative Tribunal.

The Tribunal was of the view that the question of vires of the amended rules need not be gone into in the facts of this case, because the question of determination of seniority in a case like this was concluded by the judgment of this Court in the case of *Y.V. Rangaiah v. J. Sreenivasa Rao*, AIR 1983 SC 852, wherein it was held that the vacancy in the promotional posts occurring prior to the amendment had to be filled up in accordance with unamended rules. The Tribunal further held that in an earlier case the Tribunal had laid down the principle that in the case of an IAS officer, seniority was to be determined in accordance with the rules prevalent on the date promotion become due and not the rules which came into force on the date of actual appointment. Applying this principle, the Tribunal concluded that "we are of the firm opinion that since the panel drawn in August, 1988 was in regard to the vacancies upto 1.2.1989 and the applicant was actually appointed on 15.2.1989 in the vacancy occurred on 1.2.1989, the rules applicable on 1.2.1989 shall be applicable to him i.e. seniority of the applicant, namely, Shri S.S. Uppal, shall be determined in accordance with Indian Administrative

A Service (Regulation of Seniority) Rules, 1987. Consequently, the orders dated 4.6.1991 and 4.2.1994 rejecting the representation and memorial of the applicant are liable to be quashed and they are accordingly quashed."

B The Tribunal, ultimately, directed the Union of India to reassign the Year Allotment to S.S. Uppal, the respondent No. 1, in accordance with Indian Administrative Service (Regulation of Seniority) Rules, 1987.

C The short question that falls for determination is whether in the facts of this case the revised seniority rules of 3rd February, 1989 should be applied for the purpose of determination of seniority of S.S. Uppal. The Indian Administrative Service (Regulation of Seniority) Rules, 1987, before it was amended in 1989, provided for the Assignment of Year of Allotment of an officer appointed by selection as follows :

"The Year of Allotment of an officer appointed to the service after the commencement of these rules shall be as follows :

D The Year of Allotment of an officer appointed by selection may be determined *ad hoc* by the Central Government on the recommendations of the State Government concerned and in consultation with the commission :

E Provided that he shall not be allotted a year earlier than the year of Allotment of a promotee officer already appointed to the service and whose length of service in the State Civil Service is more than the length of continuous service of the former in connection with the affairs of the State."

F The aforesaid rule of 1987 was amended by notification dated 3.2.1989 to the following effect :

"The year of Allotment of an officer appointed by selection shall be determined in the following manner :

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- (a) For the first 12 years of Gazetted Service, he shall be given weightage of 4 years towards fixation of the Year of Allotment.
 - (b) He shall also be given a weightage of one year of service beyond the period of 12 years referred to in sub-clause (a) subject to maximum weightage of 5 Years. In this calculation fractions are
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to be ignored.

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- (c) 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 become senior to another Non-State Civil Officer already appointed to the Service."

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Uppal's claim was that the unamended rules of 1987 applied to his case and was entitled to be assigned 1978 as the Year of Allotment, because he was working in the pay-scale equivalent to the senior scale of IAS with effect from 2.7.1982. Four year's weightage had to be given to him from the date he started working in the pay-scale equivalent to the senior scale of IAS. Therefore, 1982 minus 4 i.e. 1978 would be his Year of Allotment. There was a proviso contained in Rule 3(3)(iii) of the unamended rules of 1987 by which Uppal could not have been assigned the Year of Allotment earlier than a year which had already been allotted to another officer, who had been appointed earlier in point of time in the service. As M.A. Khan had been appointed prior in point of time to Uppal and had been assigned 1983 as his Year of Allotment, Uppal was entitled to be given 1983 as the Year of Allotment.

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There is no dispute that the assignment of Year of Allotment of B.N. Singh, M.A. Khan and V.K. Dalela had been done on the basis of the provisions of unamended rules of 1987.

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On behalf of the appellant, it has been argued that since Uppal was appointed to IAS on 15.2.1989, his Year of Allotment was determined as 1985, after taking into consideration the revised weightage formula, which came into force on 3.2.1989 i.e. before the date of his appointment to IAS. The question of application of seniority rules which were in force prior to 3.2.1989, did not arise, because an officer is governed by the rules in force at the time of his appointment in the service. In that view of the matter, the Tribunal erred in upholding the contention of Uppal that in his case the pre-revised seniority rules would apply, merely because the vacancy arose on a date when the revised rules had not come into force.

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We are of the view that the question of seniority of Uppal, the respondent No. 1, has to be determined by the rules in force on the date of his appointment to IAS. The fixation of seniority in the IAS follows appointment to the service. The Year of Allotment in the IAS will have to be

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A determined according to the provisions of seniority rules which are in force at the time of his appointment. The date of occurrence of vacancy has really no relevance for the purpose of fixation of seniority in the IAS. The fixation of seniority is done only after an officer is appointed to IAS. The Central Government is competent to amend the seniority rules from time to time keeping in view the exigencies of administration.

B There is also another aspect of the case. The appointment as IAS, after inclusion of the name of a candidate in the select list, is not automatic. Mere inclusion of the name in the panel does not confer any right of appointment. This is also not a case of inordinate delay. The State Government as well as the officer concerned had to go through certain formalities before the actual appointment was made. It appears from the facts of this case that after the vacancy had arisen on 1.2.1989, a proposal of appointment of Uppal to IAS from the State Government was put up on 14.2.1989. Thereupon Uppal was promoted to IAS on 15.2.1989. It cannot be said that there was unusual delay in appointing him to IAS by which he could be said to have been prejudicated.

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D The revised seniority rules that came into force on 3rd February, 1989, applied uniformly to all the officers who were appointed on or after the date.

E The tribunal relied on the case of *Y.V. Rangaiah* (supra). That was a case dealing with Rule 4(a) (1) (i) of the Andhra Pradesh Registration and Subordinate Service Rules. There it was laid down that all first appointments to a certain State or subordinate service and all promotions in a service (otherwise than in accordance with clause (ii) of sub-rule (b) of Rule 34) shall be made from a list of approved candidates. The rule further provided that the lists had to be prepared in the month of September, every year so as to be in force until the list of approved candidates for the succeeding year was prepared. Apart from the aforesaid rules, the Government had issued instructions that all vacancies should be filled without delay. All the appointing authorities were directed to ensure that the panel were prepared promptly in the month of September every year. However, contrary to the rules and instructions, a panel or a list of approved candidates was not prepared in September 1976. In fact, the panel was drawn up only in the year 1977 by which time, the aforesaid rules were amended on and from 22nd March, 1977. The grievance of the petitioners was that contrary to the rules and also specific instructions of the Government, preparation of list of approved candidates was delayed as a result of which they were adversely affected. In the facts and circumstances of that case. It was held by this Court that the posts which fell vacant prior to the amended rules would be governed by the old rules.

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The facts in the case before us are entirely different. There has been no infraction of any rule or violation of any instruction issued by the Government. Respondent No. 1 has not been able to point out any violation of rules or regulations on the part of the Government by which he was prejudicially affected.

The case of *S.L.Kaul and Others v. Secretary to Government of India*, [1989] Supp 1 SCC 147 dealt with a problem of seniority arising out of upgradation of posts of Monitors in All India Radio. The posts of Monitor were redesignated as Sub-Editors (Monitoring) and were brought at par with those in grade IV of the Central Information Service. Although the posts of Monitor were redesignated and the pay-scales attached to the posts were enhanced to that of Grade IV posts, the relevant schedules of Central Information Service Rules were not amended for a considerable period of time. This Court held that the Monitors could not be allowed to suffer for the lapse on the part of the Government and that the delay in amending the schedules to the Rules should not be allowed to prejudice the seniority of the Monitors in any manner. The Union of India was justified in fixing the *inter se* seniority of the Monitors with effect from 29th June, 1968 when the posts were upgraded and became equivalent to Grade IV posts of Central Information Service. Since the posts of the Monitor were upgraded with effect from 29th June, 1968, they were rightly placed as seniors to the persons who were recruited in 1969 and 1970.

This case again does not throw any light on the controversy raised before us. Uppal was being taken into Administrative Service. He was actually inducted into the service on 15th February, 1989. The rules which were in force on that day for determination of seniority will clearly apply to his case. It is true that Uppal's name was included in a panel drawn up some time in August, 1988. But mere inclusion of his name in the panel did not confer upon him any right to automatic appointment to the I.A.S. Nor can it be said that he was to be treated as to have been appointed from the date when a suitable post fell vacant. It has been stated in the affidavit filed before the tribunal by Shri Hari Singh, Under Secretary to the Government of India that although a vacancy had arisen on 1st February, 1989, the proposal for appointment of Uppal to I.A.S. was received from the State Government only on 14th February, 1989. The seniority of an officer appointed into the I.A.S. is determined according to the seniority rules applicable on the date of appointment to the I.A.S. Weightage in seniority cannot be given retrospective effect

A unless it was specifically provided in the rule in force at the material time. In the case of *Shankarasan Dash v. Union of India*, JT (1991) (2) S.C. 380, it was pointed out by this Court that the existence of vacancies did not give any legal right to a selected candidate.

B We are of the view, in the facts of this case and also having regard to the relevant rules, it cannot be said that seniority of Uppal will have to be decided in accordance with the seniority rules which were in force before the amendments were made on 3rd February, 1989. The appeal is, therefore, allowed. The judgment and order of the Central Administrative Tribunal, Jabalpur dated 12th January, 1995 is set aside. Each party will pay and bear its own costs.

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R.P.

Appeal allowed.