

**(2002) 09 DEL CK 0008**  
**In the Delhi High Court**  
**Case No : C.W.P. No. 4411 of 2002**

Satya Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 13-09-2002

**Acts Referred:**

Administrative Service (Recruitment) Rules, 1954 — Rule 8(1), 8(2)  
Administrative Service (Regulation of Seniority) Rules, 1987 — Rule 3(3)  
Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (2002) 09 DEL CK 0008

**Hon'ble Judges :** S.B. Sinha, C.J.; A.K. Sikri, J

**Bench :** Division Bench

**Advocate :** Shiv Sagar Tiwari and B.N. Jha, for the Appellant; Jayant Bhushan, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

S.B. Sinha, C.J.—Interpretation of Rule 3(3)(iii) of the Indian Administrative Service (Regulation of Seniority) Rules, 1987 (hereinafter for the take of brevity referred to as, "the Seniority Rules") governing year of allotment of an officer is in question in this writ petition.

2. The petitioner herein was selected on 20.02.1991 for appointment to the Indian Administrative Service (in short, "IAS") in terms of Rule 8(2) of the Indian Administrative Service (Recruitment) Rules, 1954, which reads thus:-

"The Central Government may, in special circumstances and on the recommendations of the State Govt. concerned and in consultation with the commission and in accordance with such regulations with the State Govt. may, after consultation with the State Govts., and the commission, from time to time, make, recruit to the Service any person of outstanding ability and merit serving the connection with the affairs of the State who is not a member of the state civil service of that State but who holds a gazetted post in a substantive capacity."

His year of allotment in IAS was required to be determined in terms of Rule 3(3) (iii) of the Seniority Rules as amended by a notification dated 03.02.1989, which is as under:-

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

(a) For the first twelve years of gazetted service he shall be given a weightage of 4 years towards fixation of the year of allotment;

(b) He shall also be given a weightage of one year for every completed three years of service beyond the period of 12 years, referred to in Sub-clause (a), subject to a maximum weightage of 5 years. In this calculations 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 become senior to another non State Civil Service officer already appointed to the service.

Provided further that he shall not be allotted a year earlier than the year of allotment assigned to an officer already appointed to the service in accordance with Sub-rule (1) of Rule 8 of the (Recruitment) Rules, whose length of Class I continuous service in the State Civil Service is equal to or more than the length of class I continuous service of the former in connection with the affairs of the State."

3. One Dr. J.N. Dubey, a non SCS Officer of Uttar Pradesh was appointed in terms of the above rules. He was assigned 1983 as his year of allotment. The petitioner was placed in the seniority list below the aforementioned Dr. J.N. Dubey. It is not in dispute that the petitioner in ordinary course could have been entitled to 9 years of weightage having regard to the fact that he had rendered 28 years of gazetted service under the State Government. The year of allotment of the aforementioned Dr. J.N. Dubey was later on revised from 1983 to 1980. The petitioner herein filed a representation in July, 1993 stating that as the year of allotment of Dr. J.N. Dubey was revised from 1983 to 1980, the restriction placed in his case did not exist and his year of allotment should also be revised from 1983 to 1982. The said representation was rejected inter alia on the ground that as Shri Ganga Deen, another non-SCS Officer appointed to IAS before the petitioner, was assigned 1983 as his year of allotment; as the year of allotment had to be restricted with reference to that of Shri Ganga Deen in the changed situation in terms of the first proviso to the Seniority Rules.

4. The petitioner questioning the said order filed an original application before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter for the sake of brevity referred to as, "the Tribunal"), which was registered as O.A. No. 1446 of 1999. By reason of the impugned judgment dated 03.10.2001, the learned Tribunal dismissed the said application holding that in the event

contention of the petitioner is accepted, the aforementioned Shri Ganga Deen's year of allotment would be fixed as 1984 and as thereby he would be directly affected and as such the Original Application was not maintainable as he had not been impleaded as a party.

As regards the plea of discrimination raised by the petitioner, it was held:-

"7. A plea of discrimination can be validly taken if it is in accordance with the law, and not in opposition to it. Whatever factors prevailed with respondents to revise Shri J.N. Dubey's the year of allotment the fact remains that Shri Gunga Din was appointed to the I.A.S. prior to applicant and as Gunga Din was given 1983 as his year of allotment, applicant cannot be given a year of allotment prior to 1983, because doing so would violate Rule 3(3)(iii) IAS (Regulation of Seniority) Rules, 1987."

5. It is not in dispute that the petitioner had earlier filed an Original Application before the learned Tribunal, which was marked as O.A. No. 1911 of 1995. The said Original Application was disposed of by an Order dated 03.11.1997 with the consent of the parties that the petitioner herein should make a self-contained representation before the competent authority within one month from the date of receipt of a copy of this order and the same would be considered by the respondents in the light of the case of Shri Sudhakar Singh by a detailed, speaking and reasoned order within three months from the date of receipt of the said representation.

6. Mr. Shiv Sagar Tiwari, the learned counsel appearing on behalf of the petitioner, at the outset would draw our attention to the order dated 01.09.1996 passed in M.A. No. 748/96 in O.A. No. 1911/95, which is to the following effect:-

"M.A. 748/96 has been filed by the applicant for production of certain documents by the respondents. The learned counsel for respondents states that the respondents are ready to produce the records for perusal of the Bench on the next date of hearing. Respondents are directed to make available the records on the next date of hearing.

List on 1.10.96."

The learned counsel would contend that as despite the said order, the records were not furnished, an adverse inference ought to have been drawn against the respondent.

According to the learned counsel, said Shri Sudhakar Singh, who was entitled to weightage of 5 years had earlier been granted 1986 as the year of allotment, but the said year of allotment on a representation was later on changed from 1986 to 1985 by an order dated 03.07.1995.

Our attention has also been drawn to the gradation list of the IAS Officers of Uttar Pradesh Cadre, from a perusal whereof it appears that both the said S/Shri Ganga Deen and J.N. Dubey were given 1983 as their year of allotment. In the

said gradation list issued on 01.01.1993, S/Shri Ganga Deen, J.N. Dubey and the petitioner were at S. Nos. 424, 425 and 426 respectively, whereas in the seniority list issued on 28.02.1995, the said Shri Ganga Deen and the petitioner were at S. Nos. 387 and 388; however, Shri Sudhakar Singh whose year of allotment was 1986 was at S. No. 449, but having regard to the revision of the year of allotment, his name was placed at S. No. 420.

The learned counsel would submit that the learned Tribunal went wrong in holding that Shri Ganga Deen was a necessary party and in his absence the Original Application could not have been effectively determined inasmuch as no relief as such had been claimed by the petitioner against the aforementioned Shri Ganga Deen, nor having regard to the fact that both of them had since retired, any change in their respective status would have taken place.

The learned counsel would contend that the petitioner would be entitled to only to certain monetary benefit and, thus, the Original Application should have been allowed by the learned Tribunal. In any event, contends the learned counsel, a case of clear discrimination had been made out having regard to the fact that whereas in the case of Shri J.N. Dubey and Shri Sudhakar Singh, the year of allotment had been changed, the same had not been done in the case of the petitioner.

7. Mr. Jayant Bhushan, the learned counsel appearing on behalf of the respondents, on the other hand, would contend that only because mistakes had been committed in the case of Dr. J.N. Dubey and Shri Sudhakar Singh, the petitioner cannot take any benefit arising there from.

According to the learned counsel, the first proviso appended to Rule 3(3)(iii) of the Seniority Rules is mandatory in nature and as thereby the petitioner cannot claim any legal right to get the year of allotment changed from 1983 to 1982, the impugned order cannot be faulted.

8. In furtherance of the order dated 02.06.1998, which was impugned before the learned Tribunal, a detailed order had been passed by the respondents.

In terms of Rule 3(3)(iii) of the Seniority Rules, the petitioner was entitled to 9 years of weightage, but for the aforementioned proviso, it is not in dispute that the aforementioned Shri Ganga Deen had been allotted 1983 as the year of service. Had the petitioner been granted weightage of 9 years, he would be deemed to have been appointed in the year 1982 and in that event he was bound to be placed above Shri Ganga Deen, which was impressible in terms of the proviso aforementioned. The effect of the aforementioned proviso would be to restrict the application of weightage rule.

9. In *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, the Apex Court has laid down that a proviso has four different functions in the following terms:-

"a) to explain the meaning and intendment of the Act itself.

b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which is seems to sub-serve.

c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.

d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and right with which any person under a statue, has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

10. In the instant case, the proviso curtails applicability of the weightage rule to the extent that a person despite weightage having been given could not have become senior to another non-SCS Officer already appointed in the service. Having regard to the fact that Shri Ganga Deep had been appointed prior to the petitioner, the year of allotment of 1983 granted to the petitioner must be held to be correct in law. In that view of the matter, there cannot be any doubt whatsoever that the petitioner did not have any legal right to get his year of allotment changed.

11. Furthermore, we agree with the contention of Mr. Jayant Bhushan to the effect that only because a mistake had been committed in the matter of grant of year of allotment to the aforementioned Shri J.N. Dubey and Shri Sudhakar Singh, the same by itself would not have been a ground to change the year of allotment of the petitioner. Only because a mistake had been committed in a case of some other persons, Articles 14 and 16 of the Constitution of India would not be attracted.

The petitioner cannot take benefit of such a wrong order, as it is well known that illegality cannot be perpetuated. It is now trite that nobody can derive any benefit out of an illegal order, as Article 14 provides for a positive concept.

A writ of or in the nature of Mandamus, as is well known, can only be issued if the petitioner demonstrates existence of a legal right in himself and a corresponding legal duty on the respondent. Thus, the illegality committed by the authorities or a wrong order passed by the Tribunal cannot clothe the petitioner(s) with a legal right, which would not be enforceable in law. A citizen is entitled to the benefit of an order provided the same is correct.

12. In State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, the law operating in the field is stated in the following terms:-

"30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favor of any

individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favor of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution, which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:-

"Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

Again in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

"Suffice it to hold that the illegal allotment founded upon ultra virus and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

13. For the reasons aforementioned, there is no merit in this writ petition, which is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.