
(2016) 01 KAR CK 0090

In the Karnataka High Court

Case No : Writ Petition Nos. 44681 and 44682 of 2015

Union of India and another

APPELLANT

Vs

F.R. Jamadar and others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

All India Services Act, 1951 — Section 3(1-A)

Citation : (2016) 2 KantLJ 624

Hon'ble Judges : Mohan M. Shantanagoudar;K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : M.S. Bhagwat, Advocate, D. Aswathappa, A.G.A, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantanagoudar, J. - The order dated 20-4-2015 passed by the Central Administrative Tribunal, Bangalore Bench in O.A. No. 958 of 2014 is called in question in these writ petitions.

2. By the impugned order, the petitioners herein are directed to place respondent No. 1 herein in the year of allotment, i.e., year 2000, in accordance with Indian Administrative Service (Regulation of Seniority) Rules, 1987. The Tribunal has ultimately concluded that the first respondent is entitled to allotment year 2000 in respect of IAS cadre and consequently he is conferred with all the benefits flowing therefrom.

3. Respondent 1 was appointed in the cadre of Karnataka Administrative Service on 9-7-1984, to the post equivalent to the post of Deputy Collector. The first respondent has completed about 25 years of continuous service in the civil services not below the rank of Deputy Collector. He gained promotion to Indian Administrative Service in view of the order passed by the first petitioner on 14-11-2011 as against vacancy for the year 2009, which means the vacancy in IAS cadre, in the matter on hand, occurred in the year 2009. The seniority of Officers in the cadre of IAS is regulated by the Indian Administrative Service

(Regulation of Seniority) Rules, 1987 ('Seniority Rules' for short). Rule 3 of the said Rules pertains to assignment of order of allotment. The Seniority Rules were modified to certain extent with effect from 18-4-2012. The modified Seniority Rules would affect the service career of the first respondent to the maximum extent. Petitioner No. 1 has assigned the year of allotment as 2001 to respondent No. 1 based on modified Seniority Rules, 2012.

Being dissatisfied with the year of allotment 2001, ordered by the first petitioner as mentioned supra, the first respondent approached the Central Administrative Tribunal in O.A. No. 958 of 2014 seeking a declaration that the year of allotment made vide notification dated 6-2-2014 (on which date the seniority of the first respondent as IAS was fixed) as 2001 is arbitrary and illegal. Consequently, he sought for a direction to assign the year of allotment as 2000. The Central Administrative Tribunal on considering the entire material on record and on hearing, allowed the application filed by the first respondent herein and granted the relief in his favour as prayed for. The said order of the Central Administrative Tribunal is assailed in these writ petitions by the Union of India.

4. Sri Krishna S. Dixit, learned Assistant Solicitor General of India, taking us through the entire material on record submits that in view of the amended Seniority Rules which came into force on 18-4-2012, the first respondent is rightly assigned the year of allotment as 2001. According to him, the amended Seniority Rules would govern the field and hence the Tribunal is not justified in granting the relief in favour of the first respondent relying on unamended Rules pertaining to IAS Officers.

Per contra, Sri Bhagwat, learned Counsel appearing on behalf of the first respondent argued in support of the order passed by the Central Administrative Tribunal.

5. On hearing the learned Advocates on record and on going through the material on record, we find that the order of the Tribunal is just and proper. Admittedly, vacancy in IAS cadre occurred in the year 2009. The selection of the first respondent for 2009 vacancy was made on 2-11-2011. Respondent 1 was promoted to IAS cadre on 14-12-2011. Seniority Rules pertaining to IAS Officers were modified to certain extent with effect from 18-4-2012. It is not in dispute that in case if the modified/amended Seniority Rules are applied retrospectively to the case of the first respondent, he would be losing seniority of one year. But, the modified Seniority Rules which came into effect on 18-4-2012, cannot be given retrospective effect. As mentioned supra, the vacancy relating IAS cadre occurred as far back as in the year 2009. For the reasons best known to the petitioners/concerned Selection Committee, they did not meet for considering the name of the first respondent for inclusion in the selection list till the year 2011. Selections were made only on 2-11-2011 in respect of 2009 vacancy. Since the first respondent was selected in respect of the year 2009 vacancy, and as the selection is made on 2-11-2011 (i.e., much prior to 18-4-2012), the modified Seniority Rules of 18-4-2012 cannot be made applicable. At the time

when vacancy arose and at the time of selection, old Seniority Rules were operating. Based on the old/unamended Rules, the first respondent is entitled to the year of allotment as 2000 and not 2001. As mentioned supra, the amended recruitment rules in which weightage given to the length of service rendered has been reduced cannot be given retrospective effect in view of the fact that it has been explicitly stated in the IAS Amended Rules, 2012 that they shall come into force on the date of their publication in the Gazette notification, i.e., from 18-4-2012.

6. In this context, it is also relevant to note the provisions of All India Services Act, 1951 ('Act' for short). Section 3 of the said Act (relevant portion) reads thus:-

"3. Regulation of recruitment and conditions of service. - (1) The Central Government may, after consultation with the Governments of the States concerned, including the State of Jammu and Kashmir, and by notification in the Official Gazette make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All India Service.

(1-A) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to pre-judicially affect the interests of any person to whom such rule may be applicable."

(emphasis supplied)

Sub-section (1-A) of Section 3 of the Act, makes it amply clear that the power to make Rules conferred under Section 3 of the Act shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them; but no retrospective effect shall be given to any rules so as to pre-judicially affect the interests of any person to whom such rule may be applicable. Admittedly, it is deemed that the first respondent is born in IAS cadre in the year 2009 since the vacancy of IAS arose in the year 2009. If it is so, the unamended Seniority Rules which existed then would operate. The amended Seniority Rules which came into effect from 18-4-2012, firstly cannot be made applicable to the case of the first respondent in view of the fact that those Rules cannot be given retrospective effect. Secondly, since the amended Seniority Rules affect the interest of respondent No. 1 pre-judicially, such Rules cannot be given retrospective effect.

7. Sri Bhagwat, learned Advocate appearing on behalf of respondent No. 1 however drawing the attention of the Court to the order of the Central Administrative Tribunal, Hyderabad, passed in O.A. No. 84 of 2011, disposed of on 4-8-2014, contends that similar view as the one taken by us in this matter is taken by the Central Administrative Tribunal, Hyderabad in respect of an IPS Officer, and such order of the Tribunal is not questioned by the Union of India before any Court and same has been accepted by the Union of India and acted

upon. The said submissions are recorded and such submission is not disputed by the learned Assistant Solicitor General. It relevant to note that the Seniority Rules of IPS Officers are akin to the Seniority Rules of IAS Officers.

8. Be that as it may, since we find that the Tribunal is justified in granting the relief in favour of the first respondent because of the aforementioned reasons, no interference is called for.

9. Accordingly, writ petitions fail and the same stand dismissed.