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(2009) 01 SHI CK 0016

In the High Court Of Himachal Pradesh

V.P. Gupta — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 1 ShimLC 363

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—Petitioner in the present writ petition under Articles 226/227 of the Constitution of India, has sought judicial review of order dated 8th May, 2001 of the Central Administrative Tribunal, Chandigarh Bench, whereby original application filed by the petitioner, seeking quashing of order dated 28th January, 1998, Annexure A-l, regarding the year of allotment, for the purpose of seniority in the cadre of Indian Administrative Service, stands dismissed.

2. Relevant facts may be stated thus. Petitioner was appointed to H.P. Administrative Service (hereinafter referred to as the State Service) in the year 1974. In the seniority list of State Service issued on December 4, 1978, his name figured at Sr. No. 41, while names of some ex-servicemen members of the service appeared at Sr. Nos. 68, 69, 87, 107 and 109. In the seniority list, issued on 16th August, 1983, ex-servicemen members of the service were shown seniors to the petitioner and several other officers. Their names were shown at Sr. Nos. 15 to 20, while the name of petitioner was shown at Sr. No. 31. Two writ petitions, being CWP No. 407 of 1983 and CWP No. 37 of 1985 were filed by two batch-mates of the petitioner, named Rattan Lal and S.N. Katwal, challenging the seniority list, wherein ex-servicemen, who though ranked junior to the petitioner and his above named batch-mates were placed above them in the seniority list, issued on August 16, 1983.

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3. During the pendency of those writ petitions, State Administrative Tribunal was constituted and the writ petitions were transferred to that tribunal. The tribunal decided the two petitions in favour of the batch mates of the petitioner and ordered that all the members of the first batch of the service (i.e. the batch of the petitioner) are entitled to rank higher in seniority to the private respondents (ex-servicemen), whose names were shown at Sr. Nos. 15 to 20 in the seniority list issued on August 16, 1983. Judgment of the tribunal was appealed against and the Hon''ble Supreme Court dismissed the appeal on 18th October, 1994.

4. Meanwhile, petitioner and several other officers of the State Service had been inducted into Indian Administrative Service. Order regarding re-fixation of seniority passed by the State Administrative Tribunal, necessitated the review of select lists on the basis of which the petitioner and other members of the State Service had already been inducted into Indian Administrative Service. As a consequence of review of select lists, the petitioner was appointed to the Indian Administrative Service w.e.f. 30th June, 1988 on the basis of review select list of 1987. In the meantime, Indian Administrative Service (Regulation of Seniority) Rules, 1987 replacing the Indian Administrative Service (Regulation of Seniority) Rules, 1954 came into force. These rules came into force from 6th November, 1987. Amendment was carried out to these rules, particularly to rule 3, pertaining to assignment of year of allotment on 18th January, 1988. In accordance with the provision of this rule, petitioner was given four years'' weightage for his being a member of the State Service and resultantly the year 1984 was assigned as year of his allotment in the Indian Administrative Service. Petitioner felt that he was entitled to be allotted the year 1981, by counting his entire officiating period against a senior post from 1985 onwards, in accordance with Regulation 3 (iii)(b) of the Regulations framed under Rules of 1954. He made a representation to the respondents which was rejected. He then filed an original application before the Central Administrative Tribunal, which the tribunal has dismissed vide impugned order.

5. Stand taken by the respondents before the Central Administrative Tribunal was that the year of allotment was required to be determined not under the Rules of 1954 and the Regulations issued thereunder, as claimed by the petitioner, but in accordance with the Rules of 1987 as amended in January, 1988 since his appointment to the Indian Administrative Service had been made w.e.f. 30th June, 1988.

6. From the reading of the order of Central Administrative Tribunal, it appears that the tribunal did not take into account the plea of the respondents that the matter was governed by the Rules of 1987, as amended in the year 1988. The tribunal dismissed the original application holding that the petitioner had not disclosed as to in which year junior most officer of direct category had started officiating in the senior post, immediately prior to his having commenced officiation in a senior post. This reasoning of the Central Administrative Tribunal is wrong and contrary to the pleadings because the petitioner very categorically

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stated that Bheem Sain from a direct recruit category was the junior most officer, who had started officiating in senior post immediately before him and that he started officiating in the senior post in the year 1981.

7. We have heard the Counsel for the petitioner, also the petitioner, who is present in person and the learned Assistant Solicitor General of India.

8. Though, as already noticed hereinabove, we find that the reasoning given by the tribunal is contrary to the facts on record, yet we are not inclined to interfere with the order of the Tribunal for the reasons which follow.

9. Admittedly, the petitioner was appointed to the Indian Administrative Service w.e.f. 30th June, 1988 on the basis of his name -figuring at Sr. No. 1 in the reviewed select list of 1987, By then, Rules of 1987, as amended in the year 1988, which amendment was effective from 18.1.1988, had come into force. Rule 3 of the said rules has a basis, different from the Rules of 1954 and the regulations framed thereunder, for determining the year of allotment. According to Rule 3(3)(ii) of 1987 Rules the year of allotment of a promotee officer shall be determined in the following manner:

(a) For the service rendered by him in the State Civil Service upto twelve years, in the rank not below that of a Deputy Collector or equivalent, he shall be given a weightage of four 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 twelve years, referred to in Sub-clause (a), subject to a maximum weightage of five years. In this calculation, 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 be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that Select List of appointment to the service on the basis of an earlier Select List.

10. Petitioner has been given 4 years'' weightage in accordance with Sub-rule (3) (ii)(a) of the aforesaid Rules of 1987. Admittedly, he was not entitled to any extra weightage under Clause (b) because of his having not put in three years of service in addition to 12 years service, referred to in Rule 3 (ii)(a).

11. Petitioner claims that his name having figured in the select list of 1987, year of his allotment should be determined in accordance with Rules of 1954. The claim made by the petitioner is contrary to Rules of 1987. Rule 3(3) of 1987 Rules clearly says that the year of allotment of an officer appointed to the service, after the commencement of these rules, shall be in accordance with method prescribed therein. Hon''ble Supreme Court in Union of India Vs. S.S. Uppal and another, , has very categorically ruled that in the case of appointment of a person to the Indian Administrative Service after the commencement of

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Rules of 1987, the year of his allotment has to be fixed, as per provision of Rule 3 of 1987 Rules, and not in accordance with the earlier Rules of 1957, which stand repealed by the Rules of 1987.

12. In the aforesaid case before the Supreme Court, the affected officer, who was a Joint Director of Industries, was considered suitable for absorption in the Indian Administrative Service in August, 1988. Three more officers were also considered suitable for absorption alongwith him. Those three officers were placed above him in the panel. Those persons were appointed in the year 1988 itself. The affected officer was not appointed in the year 1989 as no vacancy was available. Fourth vacancy occurred on 1st February, 1981. On 3rd February, 1989, Rule 3 (3)(iii) pertaining to year of allotment of officers absorbed from services other than the State Civil Service was amended. The affected officer was appointed on 15.2.1989. He claimed seniority in accordance with the provision of Rule 3(3)(iii) as was in vogue prior to its amendment effective from 3.2.1989. Rejecting his plea, the Supreme Court held that he having been appointed on 15.2.1989, i.e. after the amendment of Rule 3(3)(iii) was not entitled to the year of allotment on the basis of unamended rule. This judgment of the Supreme Court applies to the case in hand on all fours.

13. It was submitted on behalf of the petitioner that the action of the respondents in choosing the date of his appointment as 30th June, 1988, on the basis of reviewed select list, for which the D.P.C. was held on 11.2.1997, is whimsical, arbitrary and, therefore, liable to be reviewed. For a number of reasons, we do not find any merit in this submission. No foundation for this plea had been laid in the original application, which was filed before the tribunal. Even in the present writ petition, such a foundation has not been laid. From the proceeding of the review D.P.C. (Annexure P-5), we find that the earlier appointments, on the basis of select list of 1987, were made w.e.f. 30th June, 1988. It was for this reason that when the select lists, including that of 1987, were reviewed in February, 1997, appointments of the State Officers from the reviewed select list of 1987, were made with effect from 30th June, 1988.

For the foregoing reasons, we do not find any merit in the petitioner''s claim. Consequently, the writ petition is dismissed.

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