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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18th November, 2019

Decided on: 2nd December, 2019

W.P. (C) 5954/2016 & CM 24536/2016 (stay)

UNION OF INDIA

.....Petitioner

Through: Ms. Maninder Acharya, ASG and Mr
Arun Bhardwaj, CGSC for UOI with
Mr Nikhil Bhardwaj, Advocate.

versus

VINOD ASHWINI SAXENA & ORS.

..... Respondents

Through: Mr Ajay Kumar Tandon, Ms Purnima
Singh, Advocates for R-1.

Mr Sudhir Walia and Ms Niharika
Ahluwalia, Advocates for R-2.

Mr Dewesh Singh and Mr Sukriti
Ghai, Advocates for R-3.

+ **W.P. (C) 1206/2017 & CM 5492/2017 (stay)**

SIDHARTH ZUTSHI

.....Petitioner

Through: Mr Devesh Singh, Ms Sukriti Ghar
and Mr Rahul Adhana, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Maninder Acharya, ASG and Mr
Vikram Jetly, CGSC for UOI.

Mr Ajay Kumar Tandon and Ms
Purnima Singh, Advocates for R-2.

Mr Sudhir Walia and Ms Niharika
Ahluwalia, Advocates for R-3.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

J U D G M E N T

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Dr. S. Muralidhar, J.:

1. These two petitions are directed against an order dated 1st December, 2015, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') in OA No.1366/2014 filed by the Respondent No.1 in W.P.(C) No.5954/2016, Mr. Vinod Ashwani Saxena (who is also Respondent No.2 in W.P.(C) No.1206/201).
2. In the said order, the CAT directed that the seniority of Respondent No.1 in the Research and Analysis Services ('RAS') should be fixed by taking into account his year of allotment in the Indian Engineering Services ('IES').
3. Additionally, W.P.(C) No.1206/2017 filed by Mr. Sidharth Zutshi (who was Respondent No.3 in OA No.1366/2014 before the CAT), also challenges an order dated 7th December, 2016, passed by the CAT in RA No.206/2016, declining to review its earlier order dated 1st December, 2015 in OA No.1366/2014.
4. The background facts are that Mr. Saxena, who at the time of filing the above OA No.1366/2014 was working as Director in the Cabinet Secretariat, initially cleared the IES exam conducted by the Union Public Service Commission ('UPSC') in 1992. On 7th February, 1994, Mr. Saxena joined the IES as a Group-A service and he was selected in the Central Public Works Department ('CPWD').

5. Mr. Saxena again appeared for the Civil Services (Main) Exam in 1993 and was selected in the Indian Civil Accounts Service ('ICAS'). He submitted a technical resignation from the IES and joined ICAS with effect from 5th October, 1994 in the forenoon.

6. On 1st October, 1996 the willingness of Mr. Saxena was sought by the Ministry of Finance, Department of Expenditure ('DoE'), Government of India, for consideration for direct recruitment to the Cabinet Secretariat in RAS. According to Mr. Saxena, the original seniority of the officers selected in the RAS was protected and the *inter se* seniority of officers of the same year of allotment was determined on the basis of the UPSC merit. Mr. Saxena contends that at the relevant time, IES was not a feeder cadre for the RAS and that, therefore, Mr. Saxena's seniority of ICAS was only protected. He was allotted the 1994 batch of the RAS.

7. Mr. Saxena states that on 28th May, 1997 the Cabinet Secretariat informed him that his past service would count for seniority, pension, leave, LTC, etc. On 13th October, 1997, the DoE conveyed its sanction for counting Mr. Saxena's past service "as qualifying service for pensionary benefits in terms of Rule 26 (2) of the CCS (Pension) Rules". It was further directed in the said order as under:

"The transit time from 4.10.94 to 12.10.94 being the time taken by Shri Saxena to Join the ICAS at Hyderabad shall be treated as the kind of leave due and admissible to Shri Saxena on the date of relief from. CPWD w.e.f. 3.10.94 (AN) in terms of Rule 26(3) of the CCS (Pension) Rules. Accordingly, he will also be entitled to carry forward his balance of leave due to him before

joining ICAS and also leave salary for the transit time If not already drawn."

8. IES became the feeder service for the RAS subsequently. According to Mr. Saxena, in 2013 he came across certain officers in the Cabinet Secretariat, who had been recruited from the Central Power Engineering Service ('CPES'), Central Water Engineering Service ('CWES'), etc., to fill up its various posts on lateral induction / direct recruitment on transfer basis. The IES, CPES, CWES, etc. had been included in the list of eligible Group-A services for recruitment in the RAS.

9. Upon making inquiries, Mr. Saxena learnt that Mr. Dharmendra Bhargava (Respondent No.2 in OA No.1366/2014 and Respondent No.2 in W.P.(C) No.5954/2016) had passed the IES exam in 1993 and had been on deputation on Cabinet Secretariat in the telecom cadre since July, 2005. He was given the seniority of 1993 batch i.e. the year of exam, and was also promoted in the Senior Executive Cadre (SEC) of the RAS ahead of Mr. Saxena. According to Mr. Saxena, since he had qualified for the IES in the 1992 exam, he ought to be placed above Mr. Bhargava.

10. Mr. Saxena also stated that Mr. Sidharth Zutshi, Respondent No.3 in OA No.1366/2014 had passed the 1993 IAS exam and had joined the RAS in 1998 along with Mr. Saxena. According to Mr. Saxena, Mr. Zutshi did not have any history of serving All India Services / Central Group-A Services, prior to 1994.

11. Mr. Saxena pointed out that in view of the secretive nature of the

policies of RAS, which are not discussed/disclosed openly, even within the RAS, there was lack of clarity on policy matters. This, according to Mr. Saxena deprived him of an opportunity of protecting his career interests.

12. On 30th May, 2013 Mr. Saxena made a representation to the Cabinet Secretariat in the Union of India, for rectification of the year of his batch allotment and conferment of his seniority with all allied benefits. A reply was received on 20th August, 2013, following which, Mr. Saxena made further representations on 4th September, 6th September and 18th September, 2013. These representations were replied to by a communication dated 27th September, 2013. It stated that the request of Mr. Saxena had been considered by the Competent Authority ('CA'), but could not be acceded to.

13. According to Mr. Saxena, similarly placed persons had been given consequential benefits, including seniority in promotion, on the basis of their original date/year of allotment in their original organizations. *Inter alia*, Mr. Saxena referred to the order dated 18th August, 2005 of the CAT in OA No.251/2005 (**Raghav Prasad Bhatnagar v. UOI**) whereby a direction was issued to the Petitioners herein to fix the year of allotment of Mr. Bhatnagar in the RAS as 1992 by giving him the benefit of the past service rendered in the Central Industrial Security Force ('CISF'). The said order was upheld by this Court by its judgment dated 2nd June, 2006, in W.P.(C) No.9566/2006.

14. The stand taken by the Petitioners before the CAT was that Mr. Saxena had only mentioned his ICAS 1994, as his previous service. He had never mentioned about his IES service from 7th February to 3rd October, 1994 in

the application form submitted at the time of his recruitment in the RAS. Consequently, in terms of Rule 24 of the R&AW (RC&S) Rules, 1975, para 2(b), he was allotted 1994 as the year of allotment. Even in the ICAS, his previous service in IES was counted as qualifying service only for pensionary benefits in terms of Rule 26 (2) of the CCS (Pension) Rules and not for change in the year of allotment.

15. As regards grant of seniority to Mr. Bhargava, it is submitted by the Petitioners that he is a deputationist officer who was initially allotted the 1994 batch in Indian Telecom Service by his Cadre Controlling Authority. It is stated that Mr. Bhargava cannot be granted seniority vis-a-vis departmental officers. It was stated that Mr. Saxena's case was not comparable to that of Mr. Bhatnagar, as they were inducted prior to the amendment to the Recruitment Rules of the RAS.

16. In the impugned order, the CAT noted that even as per the record of the Petitioners, Mr. Saxena did work at the IES before joining the ICAS. It was not denied that IES has now become a feeder service for RAS. In accordance with the RAS Rules, there was no justification for not taking into account the service rendered by Mr. Saxena in the IES, for the purpose of year of allotment as well. According to the CAT, Mr. Bhargava was not the member of the RAS and had also not been permanently seconded to RAS. He was not in the reckoning for the next promotion to the rank of Joint Secretary. Therefore, grant of relief to Mr. Saxena would not affect Mr. Bhargava. In the circumstances, the OA was allowed, as already noticed hereinbefore.

17. At this juncture it must be noted that Mr. Zutshi, who was the Respondent No.3 before the CAT, filed Review Application No.209/2016 before the CAT, pointing out that his counter affidavit in OA No. 1366 of 2014 has not even been taken into account by the CAT. However, since by that time W.P.(C) No.5954/2016 had already been filed in this Court, in which an order had been passed on 15th July, 2016 staying the impugned order, the CAT did not entertain the aforementioned Review Application and dismissed it by the second impugned order dated 7th December, 2016.

18. Ms. Maninder Acharya, learned ASG appearing for the Petitioners in W.P.(C) No.5954/2016, submitted that Mr. Saxena was allotted 1994 as his year of allotment in the IES and this was in accordance with para 2 (b) of Rule 24 of the R&AW (RC&S) Rules, 1975. His service in the IES from 7th February to 3rd October, 1994 was counted as qualifying service only for pensionary benefits in terms of Rule 26 (2) of the CCS (Pension) Rules by the letter dated 13th October, 1997.

19. It is pointed out that in the Research and Analysis Wing ('R&AW'), Class-I Executive Cadre comprises of RAS, deputation and promotees streams, which are mutually exclusive. It is pointed out that Mr Saxena had in no way suffered any loss in seniority due to induction of officers in the special recruitment drive carried out in 2012, as his year of allotment was 1994. In 1996 when Mr. Saxena was taken into the RAS, IES was not a feeder service. The Special Recruitment Drive through the order dated 27th January, 2012 only made some more Group-A services as eligible services for induction into the RAS. These additional services included IES, Indian

Statistical Service, Indian Forest Service. This applied only to batches between 2002 to 2005 and not to earlier batches.

20. On behalf of Mr. Zutshi, the Petitioner in W.P.(C) No.1206/2017, it is submitted that at the time Mr. Saxena was considered for induction into the RAS, he had no claim left on his 1993 seniority in the IES, as his lien to that service had elapsed, while still in service of the ICAS. The seniority year of 1993, allotted to Mr. Bhargava, had since been corrected to that of 1994. Having voluntarily retired from IES to join the ICAS in 1994, Mr. Saxena could not seek the benefit of his service in the IES. According to Mr. Zutshi, the relevant rules allowed the recruitee i.e. Mr. Saxena to the RAS, the benefit of his immediately preceding service, which was the ICAS. It is pointed out by Mr. Zutshi that the CAT was in error in observing that no third party would be affected if the prayer of Mr. Saxena was allowed. Indeed, Mr. Zutshi's seniority would be affected.

21. Mr. Saxena filed an affidavit on 21st May, 2019 in W.P.(C) No.5954/2016 wherein *inter alia* it is contended that despite assertions by the Petitioners that Mr. Bhargava was a deputationist officer who was not inducted into the RAS, or permanently seconded to it, he has in fact been promoted as Joint Secretary, ahead of Mr. Saxena. Additionally, Mr. Saxena disclosed that by an order dated 26th October, 2018 he was dismissed from service under clause (c) of the second proviso to Article 311 (2) of the Constitution read with Rule 19 (iii) of the CCS (CCA) Rules, 1965. It is stated that another OA No.4315/2018, filed by Mr. Saxena challenging his dismissal is pending before the CAT.

22. The Court has also perused the reply dated 15th November, 2019, filed by the Petitioner to the above affidavit of Mr. Saxena. It is asserted that Mr. Bhargava, who is a deputationist officer, has no *inter se* seniority, vis-a-vis other officers in the deputation stream with the same year of allotment, or RAS officers and that inasmuch as Mr. Bhargava joined RAS on 1st July, 2005, he was not entitled for permanent secondment. However, from 11th August, 2016 onwards, this condition of the number of years to be spent on deputation, for being eligible for permanent secondment, was amended from 5th/6th year of deputation, to any time after completion of four years. Subsequently, Mr. Bhargava was inducted on deputation on permanent secondment basis. His year of allotment has been corrected as 1995.

23. As regards the promotion of Mr. Bhargava as Joint Secretary, it is stated by the Petitioners as under:

“Shri VA Saxena, RAS:94, ex- Director and Shri Dharmendra Bhargava, RAS-95 were considered for promotion to the rank of Joint Secretary along with other Directors up to 1996 batch in the meeting of the DPC held on 14.08.2017. Shri Dharmendra Bhargava was one of the officers, who were recommended as ‘fit’ for promotion by the DPC while Shri V.A. Saxena was recommended as ‘unfit’. Further, it is submitted that the DoP&T OM No. 22011/5/86-Estt(D) dated 10.04.1989, 20.06.1989, 13.07.1989 and OM No.22011/7/98-Estt(D) dated 06.10.2000 stipulate that the DPC should assess the suitability of the employees for promotion on the basis of their service records and with particulars reference to the CRs for five preceding years [ten preceding years in this case in pursuance of CS(SR) Order No5/1/2008-DO.II(A) dated 03.06.2008] irrespective of the qualifying service prescribed in the service/Recruitment Rules. The DPC should not be guided

merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because It has been noted that sometimes the overall grading in CR may be inconsistent with the grading under various parameters or attributes. Seniority of an officer does not confer right to him for promotion before his junior when he is not considered 'FIT' by the DPC."

24. It is also contended that:

"...Respondent No.1 belonged to RAS stream. The promotion from the rank of Deputy Secretary to Director in Class-I Executive Cadre of RAS officer and deputationist officer of the same batch are not linked under any rule and thus need not happen together."

25. This Court has considered the submissions of Ms. Maninder Acharya, learned ASG appearing for the Petitioners, Mr. Ajay Kumar Tandon, learned counsel appearing on behalf of Mr. Saxena, Mr. Sudhir Walia, learned counsel appearing for Mr. Bhardwaj and Mr. Devesh Singh, learned counsel appearing on behalf of Mr. Zutshi.

26. The central issue that arises for consideration is Mr. Saxena's year of allotment with respect to the RAS. His contention is that it should be 1993, on the basis of his having qualified in the IES exam of 1992. The fact, however, remains that before he joined the ICAS, he submitted a technical resignation from the IES, which was accepted. As rightly pointed out, with that, a complete severance took place with the IES. Secondly, at the time of his induction into the IES, IES was not a feeder service. Rightly, therefore, he only disclosed his ICAS service at the time of joining the RAS.

27. The CAT has indeed misconstrued the purport of Rule 26 (2) of the CCS

(Pension) Rules, as regards protection of past service. In the present case, the order granting Mr. Saxena the benefit of the past year service, was only for pensionary purposes and not for fixing the year of allotment. There is merit in the contention of the Union of India that the CAT did not take into account the spirit of the advertisement made in Employment News for the Week of 12th May, 2012 to 18th May, 2012, where all eligible services of Central Staffing Scheme were made eligible for induction in RAS. On the basis of recommendations of the Inter-Ministerial committee, a special recruitment drive was made to fill up the vacancies for the 2002-2005 batches of RAS.

28. By the same advertisement, applications were also called from candidates of batches of 2006 onwards for induction in the Junior Time Scale, as a one-time exception. The said advertisement was published to give effect to that recommendation. The officers who were recruited in the RAS pursuant to that advertisement, in no way, hampered the seniority or career prospect of Mr. Saxena.

29. For the reasons already noted hereinbefore, the comparison that Mr. Saxena seeks to draw with Mr. Bhargava is misconceived. They appear to be in two different streams in the RAS. Clearly Mr. Bhargava is not being inducted in the RAS as a lateral entry, but by way of deputation and continues as deputationist officer who has been permanently seconded in the circumstances explained hereinbefore. As regards non-promotion of Mr. Saxena, the reasons furnished by the Petitioners in their affidavit dated 15th November, 2019 clarify the position. The Court is unable to find any

illegality in such action.

30. The CAT also appears to have committed an error in presuming that the grant of leave to Mr. Saxena would not affect the seniority of anyone else in the RAS. This clearly overlooked the position of Mr Zutshi, who had filed a counter affidavit, which for some reason, was not even taken note of by the CAT.

31. For all of the aforementioned reasons, the Court finds the impugned order dated 1st December, 2015 passed by the CAT to be unsustainable in law and it is accordingly hereby set aside. Correspondingly, the Court also sets aside the order dated 9th December, 2016 passed by the CAT, dismissing Mr Zutshi's Review Application, for recall of its earlier order.

32. Nothing in this order would affect the outcome of OA No. 4315/2018, filed by Mr. Saxena against his dismissal from service, which will be decided by the CAT on its own merits in accordance with law.

33. The petitions are accordingly allowed in the above terms. The pending applications are also disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 02, 2019

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