



2024:DHC:5828-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: July 29, 2024*+ **W.P.(C) 4817/2018 & CM APPL.18526/2018****UNION OF INDIA AND ANR.**PetitionersThrough: **Mr. Vivekanand, Senior Panel
Counsel**

Versus

YASHPAL GARG AND ORS.RespondentsThrough: **Mr.M.K.Bhardwaj, Mrs.Priyanka M.
Bhardwaj and Mr.Arun Prakash,
Advocates.
Mr.Gautam Narayan, Ms.Asmita
Singh, Mr. K.V. Vibu Prasad and Mr.
Anirudh Anand, Advocates with
respondent No.9.****CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T (oral)**

1. The present petition has been filed by the petitioners under Article 226/227 of the Constitution of India seeking setting aside/quashing of para 17(ii) of the impugned order/judgment dated 21.02.2017 in OA No.3122/2015 and order dated 26.09.2017 in R.A. No.193/2017, passed by learned Central Administrative Tribunal ('Tribunal'), Principal Bench, New Delhi.
2. The background of this case, as has been spelt out in the present petition, is that during the Civil Service Examinations conducted by Union



Public Services Commission (UPSC) in year 1989 and 1990, the respondent Nos. 1 to 7 were directly appointed to entry grade of the National Capital Territory of Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Nagar Haveli Civil Service (DANICS).

3. DANICS constitutes one of the components of the 'State Civil Service' for the purpose of filling up of the vacancies in the Indian Administrative Service (IAS) Cadre of Arunachal Pradesh-Goa-Mizoram-Union Territories (AGMUT) under Rule 9 of Indian Administrative Service (Recruitment) Rules, 1954.

4. Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 framed by the Central Government in exercise of the powers conferred upon them under Sub-section 1 of the Section 3 of the All India Service Act, 1951, requires the Central Government to re-examine the strength and the composition of the IAS Cadre ordinarily at the interval of every five years. The last Cadre review of AGMUT Cadre was due in 2009 but was completed in March 2010. Consequently, the next Cadre review was due in 2015.

5. The Department of Personnel & Training vide communication dated 19.08.2014 requested the Ministry of Home Affairs for review of IAS Cadre of the AGUMT for the year 2015 which was asked to submit a proposal. However, since Ministry of Home Affairs did not receive any reply from the segments despite as many as 11 reminders sent in the year 2014 and 2015, the respondents preferred OA No.336/2015 before the Tribunal, which was disposed of with direction to the petitioners to examine the case of the applicants and pass a speaking order.

6. Pursuant thereto, the respondents moved a representation dated W.P.(C) 4817/2018



23.02.2015 before Ministry of Home Affairs and vide its order dated 08.06.2015, the respondents were informed that consolidated proposal for cadre review of IAS Officers of AGMUT Cadre shall be forwarded to DoPT for conducting cadre review.

7. Pertinently, the order dated 08.06.2015 issued by the Ministry of Home Affairs, Government of India file No.14012/2/2014 UTS-I, reads as under:

3. And whereas, the DoP&T vide their OM dated 14.05.2015 informed that the last cadre review of the IAS cadre of AGMUT was notified in March 2010 and the next cadre review falls due only in the year 2015. The Cadre review of the IAS officers of AGMUT Cadre will be carried out on receipt of the cadre review proposal from the Ministry of Home Affairs.

8. Yet another OA being OA No.3122/2015 was filed by the respondents before the learned Tribunal whereby petitioners in their counter-affidavit stated that they were not in a position to process the proposal of IAS Officers of AGUMT Cadre. However, vide order dated 29.03.2016, a request was made from DoPT to Ministry of Home Affairs to submit cadre review proposal, which was reiterated on 03.02.2017.

9. The learned Tribunal, after taking note of the various communications exchanged between the parties, in specific letter dated 29.03.2016 and OM dated 05.08.2016, directed the petitioners to complete the process of Cadre Review of AGUMT within six months and the resultant vacancies be filled-up taking up the said vacancies for the year 2015 when the cadre review got due.

10. Petitioners in their counter-affidavit filed before the learned Tribunal



stated as under:-

Para 5.7-5.13: That the finalization of the cadre review is at the advanced stage and the proposal has already under submission to the competent authority in the respondent Ministry. Thereafter, the proposal will be finalized after consultation with DoP&T. Since the newly included posts will be treated as vacancy of the year 2015, the feared loss of seniority by the applicant is unfounded and denied.

11. In compliance of order dated 21.02.2017, the petitioners in its additional counter-affidavit filed before learned Tribunal stated as under:

xii) That it is due to the complexities in the cadre structure of the AGMUT Cadre and involvement of large number of stakeholders, despite best of efforts on the part of respondent No.1 & 2, the proposal for submission before the Competent Authority has taken longer time.

xiii) That the respondent Ministry has again worked out a revised proposal of cadre review of IAS officers of joint AGMUT Cadre on 19.03.2018 and with due approval of Hon'ble Home Minister sent the same to the Respondent No.2 (DOPT) vide letter dated 21.03.2018 for needful action on their part (Annexure R-4).

xiv) The Respondent No.1 (MMA) has already complied with the directions of Hon'ble CAT (PB) contained in the order dated 21.02.2017 in OA No 3122/2015 and no action left on the part of Respondent No.1.

12. The petitioners against the aforesaid direction of the learned Tribunal preferred Review Application No.193/2017, which was dismissed by the learned Tribunal vide order dated 26.09.2017 both on merits as well as



limitation.

13. The Ministry of Home Affairs vide its OM dated 12.05.2017 complied with the order dated 21.02.2017 demonstrating the need of expediting the cadre review of AGMUT Cadre and also sent reminders dated 03.08.2017 and 04.10.2017.

14. The petitioners before this Court have challenged the aforesaid decisions passed by the learned Tribunal but have confined prayers to the grounds C, J and K of this petition, which are as under:-

C. Because giving retrospective effect to the cadre reviews will have consequential effects and inspire many other States to demand for giving retrospective effect to the cadre reviews. This will increase the cadre strength of IAS officers unnecessarily without any administrative requirements. Further, it will unnecessarily open of a Pandora's box from other States where the process of cadre review was delayed/not considered exactly after years due to administrative reasons.

J. Because, Hon'ble High Court of Delhi vide its judgments dated 12.04.2013 and 08.05.2013, in matters of Union of India & Anr. vs. K.L. Taneja & Anr. (W.P.(C) 8102/2012) and Sunil Kumar Mehra vs. MCD & Anr. (W.P.(C) 2059/2012) has held that service jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date. It was further observed that reasons for delay are merely administrative, without any taint of malafide conduct, then no retrospective promotion can be made.

K Because, Shri M. Jayram & Ors filed W.P. No.39886/2015 in High Court of Madras with the connection that the cadre review of the IAS cadre of Tamilnadu was due in the year 2003 which was actually carried out in the year 2008 and that they



would have got the earlier allotment years of IAS, had the cadre review was carried out in the year 2003 itself. On this very ground they had sought relief to declare the action of this respondent in assigning 2005, 2006 & 2007 as the year of allotment in the IAS upon their promotion from SCS, as illegal and requested to re-assign the year of allotment on the basis of re-determined cadre strength vide notification dated 14.07.2008 by treating the said cadre review to have been revised in the year 2003 itself. The Hon'ble Madras High Court vide judgement dated 30.06.2017, in a similar situation where the cadre review of State Civil Service was delayed by approximately five years due to non-convening of Cadre Review Meeting, held that merely the aforesaid delay does not give a right to petitioners to claim retrospective operation of the cadre review.

15. Relevantly, a similar issue with regard to promotion of IAS Officers came for consideration before this Court in the case of **Hemraj Singh Chauhan vs. Union of India & Ors.** , which was allowed. The appeal preferred by Union of India before the Hon'ble Supreme Court vide S.L.P.(C) 2651-52/2010 was dismissed, *inter alia* holding as under:-.

“35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under



Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

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38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion have been defeated by the acts of the Government and if not of the Central Government, certainly the unreasonable inaction on the part of the Government of State of Uttar Pradesh stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy."

16. In the case of **Hemraj Singh Chauhan (supra)**, the civil service officers who were expecting promotion under the promotion quota could not get on-time promotion and thus, crossed eligible age limit of 54 years which was challenged before the learned Tribunal whereby it was directed that they should be granted promotion from retrospective effect, i.e. from the year 2013. This Court held that the cadre review done in the year 2005 should be deemed to have been done in the year 2003.

17. The learned Tribunal while passing the impugned judgment and order has relied upon the decision in the case of **Hemraj Singh Chauhan (supra)** to hold that timely action must be construed as a constitutional obligation of the welfare state. In our considered opinion, the learned Tribunal has rightly held that the selection process for the promotional post should not be such long that to deprive of right to promotion.



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18. In view of above, finding no merit in the present petition, the same is dismissed with direction to the petitioners to comply with the directions mentioned in para 17 of the impugned order/judgment dated 21.02.2017 passed by learned Tribunal within ten weeks.

19. Pending application stands disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 29, 2024
rk/r