

CASE NO.:
Appeal (civil) 7252 of 1999

PETITIONER:
M. Amanullah Khan

RESPONDENT:
Government of India & Ors.

DATE OF JUDGMENT: 25/08/2004

BENCH:
ARIJIT PASAYAT & D.M. DHARMADHIKARI

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in this appeal is to the legality of judgment rendered by the Chennai Bench of the Central Administrative Tribunal (hereinafter referred to as the 'CAT'). Appellant was applicant in two original application nos. 1188/1993 and 1368/1993. The present appeal relates to OA No. 1368/1993. By the common judgment the original applications of two applicants i.e. the present appellant and one Mr. N. Veeramani were disposed of. In the concerned O.A. claim of the appellant was as follows:

Between 6.8.1980 and 14.12.1982 he was holding the post of Divisional Manager, Coonoor Division, Tamil Nadu Tea Plantation Corporation, Coonoor. Between 15.12.1982 and 12.6.1986, he was Sub Divisional Forest Officer in the Social Forestry Division at Tiruchendur. From 13.6.1986 to 12.2.1988, he was Divisional Forest Officer, Social Forestry Division, Tirunelveli. From 13.2.1988 to 22.7.1990, he was Divisional Forest Officer, Social Forestry Division, Ramnad. From 23.7.1990 to 2.6.1991 he was Deputy Conservator of Forests, Kundha Soil Conservation, Coonoor. From 3.6.1991 to 17.6.1991 he was District Forest Officer, Dindigul Division, Dindigul. Finally from 18.6.1991 onwards, he was District Forest Officer, Madurai Division, Madurai. He was appointed to the Indian Forest Service (in short the 'I.F.S.') on 27.3.1992. All the above posts held by him from 6.8.1980 onwards are cadre posts and his long officiation in cadre posts should be taken as continuous officiation for the purpose of fixing his seniority in the I.F.S.

Stand of the first respondent-Union of India before the CAT and the second respondent- the Government of Tamil Nadu was that the applicant was not a cadre officer and he was also not a Select List Officer, and in the absence of a certificate by the second respondent in terms of Explanation 4 to Rule 3(2)(c) of the Indian Forest Service (Regulation of Seniority) Rules, 1968 (in short the 'Seniority Rules'), the officiation is of no consequence and is fortuitous. The first respondent also took the stand that the applicant being a non-cadre officer, who had officiated in a cadre post beyond the period of six months, cannot claim the service for seniority in the absence of approval from the Central Government and the Union Public Service Commission (in short the 'UPSC') in terms of Rule 9 of the Indian Forest Service (cadre) Rules, 1966 (in short 'Cadre Rules').

CAT accepted the stand of the respondents and held that the

appellant was not entitled to any preference in the year of allotment, and the services in officiating posts were not to be reckoned for the purpose of seniority. Accordingly, the prayer was not accepted.

Learned counsel for the appellant submitted that when the appellant had officiated for nearly 10 years in higher posts it was illogical and inequitable to deny him the benefit while fixing seniority. It was submitted that relaxation of the rules should have been done to extend the benefit to the appellant.

Mr. Amarendra Sharan, learned Additional Solicitor General submitted that the decision of CAT is in line with the statutory prescription and no infirmity in the CAT's view can be noticed.

The relevant portion of Rule 3 of the Seniority Rules is as follows:

"3. Assignment of year allotment- (1) Every officer shall be assigned a year of allotment in accordance with provisions hereinafter contained in this rule.

(2) the year of allotment of an officer appointed to the service shall be-

(a)

(b)

(c) Where an officer is appointed to the service by promotion in accordance with Rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with Rule 7 or if no such officer is available the year of allotment of the junior most among the officers recruited to the service in accordance with Rule 4(1) of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former."

.....

Explanation 1:- In respect of an officer appointed to the service by promotion in accordance with subsection (1) of Rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later:

.....

Explanation 2- An officer shall be deemed to have officiated continuously in a senior post from that date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as purely temporary or local arrangement.

.....

Explanation 3- An officer shall be deemed to have

officiated in a senior post during any period in respect of which the State Government concerned certify that he would have so officiated but for his absence or leave on training.

Explanation 4- An officer appointed to the service in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules shall be treated as having officiated in a senior post during any period of appointment to a non-cadre post if the State Government has certified within three months of his appointment, to the non-cadre post that he would have so officiated but for his appointment, for a period not exceeding one year, and with the approval of the Central Government, for further period not exceeding two years, to a non-cadre post under a State Government or the Central Government in a time-scale identical to the time-scale of a senior post:

"Senior Posts" as defined in Rule 2(g) is as follows:

"2(g) Senior post means a post included and specified under item 1 of the cadre of each State in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 and includes a post included in the number of posts specified in items 2 and 5 of the said cadre, when held on senior scale of pay, by an officer recruited to the service in accordance with sub-rule (1) of Rule 4 or Rule 7 of the Recruitment Rules".

A perusal of the above rules would indicate that the period of continuous officiation in senior posts would count only from the date of inclusion in the Select List or from the date of officiating appointment to senior post whichever is later.

Rules 8, 9 and 10 of the Cadre Rules read as follows:

"8. Cadre posts to be filled by cadre officers-
Save as otherwise provided in these rules every cadre post shall be filled by a cadre officer.

9. Temporary appointment of non-cadre officers to cadre posts. (1) A cadre post in a State may be filled by a person who is not a cadre officer if the State Government or any of its Heads of Department to whom the State Government may delegate its powers of making appointments to cadre posts, is satisfied-

(a) that the vacancy is not likely to last for more than three months; or

(b) that there is no suitable cadre officer available for filling the vacancy:

x x x x

(2) Where in any State a person other than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.

X X X X

(3) On receipt of a report under sub-rule (2) or otherwise, the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction is so issued, the State Government shall accordingly give effect thereto.

(4) Where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable direction to the State Government concerned.

10. Report to the Central Government of vacant cadre posts- Cadre posts shall not be kept vacant or held in abeyance for periods exceeding six months without the approval of the Central Government. For this purpose, the State Government shall make a report to the Central Government in respect of the following matters, namely:

(a) the reasons for the proposal;

(b) the period for which the State Government proposes to keep the post vacant or hold it in abeyance;

(c) the provisions, if any, made for existing incumbent of the post; and

(d) whether it is proposed to make any arrangements for the performance of the duties of the post to be kept vacant or held in abeyance, and if so, the particulars of such arrangements".

The effect of Rule 9 of the Cadre Rules have been considered by this Court. Similar Rules in case of Indian Police Services were also considered. In *Syed Khalid Rizvi and Ors. v. Union of India and Ors.* (1993 Supp. (3) SCC 575), which related to Police Services, it was observed as follows:

"Due to exigencies of the service, the State Government has been empowered under Regulation 8 of Promotion Regulations read with Rule 9 of Cadre Rules to appoint select-list or non-select officers to man temporary vacancies in cadre posts. So long as cadre officer is available, he/she alone is to be posted to a senior cadre post. In his/her absence the select-list officer awaiting promotion must be appointed in the order found in the list. It must be the rule and deviation must be for exceptional reasons and circumstances. Where either the cadre officers or select-list officers are not available, then only non-select-list officers may be promoted to temporary vacancies which should not be likely to last for more than three months and the State

Government must strictly comply with the conditions specified in the provisions to Regulation 8 (2) of Promotion Regulations and Rule 9 of Cadre Rules. In other words, where the vacancy/vacancies continue for more than three months, the prior concurrence of the Central Government is mandatory. If it continues for more than six months prior approval of the Union Public Service Commission is also mandatory. Any appointment in violation thereof is not an appointment in accordance with the law. These appointments are mere ad hoc or local arrangement or fortuitous."

In R.R.S. Chouhan and Ors. v. Union of India and Ors. (1995 Supp(3) SCC 109) the matter was considered and it was noted as follows, while dealing with Cadre Rules:

"These rules show that while Rule 8 requires that every cadre post shall be filled by a cadre officer, Rule 9 lifts the embargo in certain circumstances and permits a cadre post to be filled by a person who is not a cadre officer provided the State Government concerned is satisfied that either (i) the vacancy is not likely to last for more than three months, or (ii) there is no suitable cadre officer available for filling the vacancy. In case the appointment is for a period exceeding three months sub-rule (2) of Rule 9 requires that the State Government shall report forthwith to the Central Government the fact of such appointment together with reasons for making such appointment and under sub-rule (3) of Rule 9 on receipt of such report the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer and where such direction is so issued the State Government is required to give effect thereto. In cases where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months sub-rule (4) of Rule 9 further requires that the Central Government shall report the full facts to the Union Public Service Commission with reasons for holding that no suitable cadre officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable directions to the State Government concerned. Rule 10 lays down that cadre post shall not be kept vacant or held in abeyance for period exceeding six months without the approval of the Central Government and the State Government is required to make a report to the Central Government in respect of the matters specified in clauses (a) to (d) of the said rule."

In view of what has been stated in Syed Khalid Rizvi's case (supra) and R.R.S. Chouhan's case (supra), the CAT's judgment does not suffer from any infirmity to warrant interference.

The inevitable result is dismissal of the appeal which we direct with no order as to costs.