

A

UNION OF INDIA AND ORS.

v.

P.C. MISRA

SEPTEMBER 2, 1993

B

[S.C. AGRAWAL AND DR. A.S. ANAND, JJ.]

*Civil Services :*

C

*Delhi, Andaman & Nicobar Islands Civil Service Rules, 1971—Rules 3(2), 18, 30, and 31—Introduction of Junior Administrative Grade—Selection and appointment—Subsequent amendment in the Rules—Competence of Rule making authority and validity of the amendments.*

D

The Respondents joined the Delhi, Andaman and Nicobar Islands Civil Service and were governed by the Delhi and Andaman & Nicobar Islands Civil Service Rules, 1971. Initially the service consisted of Grade-I (Selection Grade) and Grade II. By memorandum dated November 26, 1987, that Government introduced one more Grade viz. Junior Administrative Grade, with effect from January 1, 1986. The relevant provisions governing the newly created Grade were introduced by the 1988 Amendment in this Rules.

E

F

The Respondents were promoted to Selection Grade and further appointed to different posts which later fell in the Junior Administrative Grade after the Rules were amended in 1988. Though the Respondents were considered for appointment to the Junior Administrative Grade, they were not selected and some of their juniors were appointed to the Junior Administrative Grade on 17.5.1989. The Respondents approached the Central Administrative Tribunal challenging their non-selection and the Tribunal directed that the respondents should be deemed to have been regularly appointed to the Junior Administrative Grade with effect from 1.1.1986.

G

Against the Tribunal's judgment, Union of India preferred the present appeals.

H

Allowing the appeals, this Court

**HELD : 1.** The memorandum dated November 26, 1987 has to be read along with sub-rule (3) of Rule 31 of the Delhi and Andaman & Nicobar Civil Service Rules, 1971 and if thus read it would cover cases of officers who were eligible on January 1, 1986, the dated of introduction of the Junior Administrative Grade. Officers who fulfilled the conditions of eligibility contained in the said memorandum on December 31, 1985 were to be appointed on the Junior Administrative Grade with effect from January 1, 1986 on the basis of the said memorandum and the officers who acquired the eligibility for such appointment after December 31, 1985 would be governed by the Rules in view of the note appended below sub-rule (3) of Rule 31 and they could be appointed to the Junior Administrative Grade in accordance with the provisions of Rule 31. Neither of the respondents fulfilled the criterion for eligibility mentioned in the memorandum because both of them did not have four years service in Selection Grade on January 1, 1986. Since they could not satisfy the conditions of eligibility upto January 1, 1986, they could not be deemed to have been regularly appointed to the Junior Administrative Grade with effect from January 1, 1986, the date when the Junior Administrative Grade was introduced. They could be appointed to the Junior Administrative Grade only by way of promotion in accordance with the Rules, as amended by the 1988 Amendment. Their cases were duly considered for such promotion but they were not found suitable for appointment and were not selected. The respondents have not been able to show any infirmity in the said selection. Since the respondents were not found suitable for appointment to the Junior Administrative Grade, they cannot make a claim on the same on the basis that their juniors were appointed to the Junior Administrative Grade. [103-F-H; 104-A-E]

**2.** The Tribunal was not correct in its view that the 1988 Amendment could only govern vacancies arising after the coming into force of the 1988 Amendment and that the "vested rights and legitimate expectations" could not be taken away by retrospective amendment of the Rules. Since the Junior Administrative Grade was introduced for the first time with effect from January 1, 1986 the rule making authority was competent to make provision for appointment to the Junior Administrative Grade after it was introduced. Amendments introduced in rule 31 by the 1988 Amendment make provision for such appointments and there is no legal infirmity in

**A** the said provision. [104-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4414-15 of 1993.

**B** From the Judgment and Order dated 4.3.92 of the Central Administrative Tribunal in O.A. No. 1006 & 1140 of 1989.

WITH

Civil Appeal No. 4416 of 1993.

**C** Ms. Niranjana Singh and Ms. A. Subhashini for the appellants.

Respondent in person in C.A. 4414-15 of 1993.

**D** P.P. Rao, V.J. Francis, R.F. Nariman, Sri Narain and Sandeep Mathur for the respondents.

The Judgment of the Court was delivered by

**S.C. AGRAWAL, J.** Special leave granted.

**E** We have heard learned counsel for the appellants in the appeals and the respondent in person in appeals arising out of SLP (C) Nos. 14261-62/92 and the learned counsel for the respondent in appeal arising out of SLP (C) No. 14402/92.

**F** These appeals are directed against the orders dated March 4, 1992, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, hereinafter referred to as 'the Tribunal'. Since they raise common questions for consideration they have been heard together and are being disposed of by this common order.

**G** Delhi, Andaman and Nicobar Islands Civil Service, hereinafter referred to as 'the Service', is governed by the Delhi and Andaman and Nicobar Islands Civil Service Rules, 1971, hereinafter referred to as 'the Rules'. Initially the Service consisted of two grades, viz., Grade I (Selection Grade) and Grade II. By Memorandum dated November 26, 1987, the Government of India decided that with effect from January 1, 1986, the pay structure of the Service would be as under :

**H**

|                                                                                                                                  |               |            |   |
|----------------------------------------------------------------------------------------------------------------------------------|---------------|------------|---|
| (i) Entry Grade                                                                                                                  | Rs. 2000—3500 | Existing   | A |
| (ii) Selection Grade<br>(After 8 years)<br>(20% of APS)                                                                          | Rs. 3000—4500 | Existing   |   |
| (iii) Junior<br>Administrative                                                                                                   | Rs. 3700—5000 | New Scale  | B |
| Grade (After 12 years)<br>(With at least 4 years<br>in Selection Grade)<br>(20% of APS—Subject<br>to identification of<br>posts) |               | introduced | C |

In the said memorandum, it was stated that necessary amendments in the Rules are being carried out. The said amendments were introduced by Delhi and Andaman & Nicobar Islands Civil Service (Amendment) Rules, 1988, hereinafter referred to as 'the 1988 Amendment', notified vide notification dated November 22, 1988. Some of the amendments introduced in the Rules by the 1988 Amendment were :-

(1) Sub-rule (2) of rule 3 was substituted by the following provision:

"(2) The Service shall have the following three grades, namely :-

(i) Junior Administrative Grade;

(ii) Grade I (Selection Grade); and

(iii) Grade II."

(2) Rule 18 was substituted by the following provision :

"18. All appointments to the Service shall be made to the Junior Administrative Grade, Grade I or Grade II of the service and not against any specific posts included in the service."

(3) Rule 30 was substituted as under :

"30. The scales of pay attached to the service shall be as follows :

(i) Junior Administrative Grade

- A                      Rs. 3700-125-4700-150-5000;
- (ii) Grade I (Selection Grade)  
                             Rs. 3000-100-3500-125-4500;
- (iii) Grade II
- B                      Rs. 2000-60-2300-EB-75-3200-100-3500."

(4) In Rule 31 relating to appointments to Junior Administrative Grade and to Selection Grade sub-Rules (2) and (3) were introduced as under :

- C                      "(2) An officer with a minimum of five years of regular service in Grade I shall be eligible for being considered for promotion to Junior Administrative Grade.

- D                      *NOTE* : However, for vacancies occurring upto 31.12.1991, an officer with at least four years regular service in Grade I shall also be eligible for being considered for appointment to Junior Administrative Grade provided he has got a minimum 12 years of combined regular service in Grade I and Grade II. Provided that any service rendered in Grade II which was taken into account for promotion grade I by a duly constituted D.P.C. will be deemed to be regular service for the purpose of reckoning qualifying years of service :
- E

- F                      Provided further that service rendered in an equivalent post in a State Civil Service or in Grade II of the Delhi and Himachal Pradesh Civil Service or Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil shall count towards the 12 years period:

- G                      Provided further that where a Junior person is considered for such appointment, all persons senior to him shall also be considered for promotion to Junior Administrative Grade provided they have put in at least four years regular service in Grade I.

- H                      (3) The crucial date for determining the eligibility of officers for promotion to Junior Administrative Grade shall be 31st December of the year in which the vacancy has occurred.

- NOTE* : For promotion to the Junior Administrative Grade year-wise panel will be prepared from the year 1986, i.e., w.e.f. the year

in which the Junior Administrative Grade has been created and the crucial date will be 31st December of the year to which the panel pertains." A

Schedule I to the Rules was revised and under Delhi Administration 29 posts were specified as falling in the Junior Administrative Grade. By notification dated April 7, 1989, the Rules were further amended by Delhi and Andamans & Nicobar Civil Service (Amendment) Rules, 1989 and Schedule I was substituted and as a result the number of posts specified as falling in the Junior Administrative Grade was raised to 40. B

P.C. Misra, the respondent in appeals arising out of SLP(C) Nos. 14261-62/92, joined the Service in 1974. He was promoted to Selection Grade of the Service with effect from July 16, 1984. He was appointed to the post of Joint Director (Agriculture and Marketing), with effect from February 4, 1988. The said post is specified as falling in the Junior Administrative Grade in Schedule I to the Rules as substituted by the 1988 Amendment. He was considered for appointment to the Junior Administrative Grade but he was not selected and his juniors were appointed to the Junior Administrative Grade with effect from July 17, 1989. Feeling aggrieved by his non-selection for the Junior Administrative Grade, he filed O.A. No. 1006/89 and O.A. No. 1140/89 before the Tribunal. The said application have been allowed by the Tribunal by order dated March 4, 1992. The Tribunal has held that the said respondent should be deemed to have been regularly appointed to the Junior Administrative Grade with effect from January 1, 1986. C D E

M.N. Mathur, the respondent in appeal arising out of SLP(C) No. 14402/92, joined the Service in 1970. He was promoted to Selection Grade by order dated November 12, 1984 with effect from October 3, 1983. In November, 1986, he was appointed to the post of Joint Director (Education) and in July, 1987 he was posted as Assistant Commissioner (Sales Tax) and in September, 1988, as Deputy Commissioner (Sales Tax). All the three posts, viz., Joint Director (Education), Assistant Commissioner (Sales Tax) and Deputy Commissioner (Sales Tax) are specified as falling in the Junior Administrative Grade in Schedule I to the Rules as substituted by 1988 Amendment. He was considered for appointment to the Junior Administrative Grade but was not selected and two of his juniors were appointed to the Junior Administrative Grade on May 17, 1989. He F G H

A filed O.A. No. 1202/89 before the Tribunal which was allowed by order dated March 4, 1992. The Tribunal has directed that he should be deemed to have been regularly appointed to the Junior Administrative Grade with effect from January 1, 1986.

B In holding that the respondents should be deemed to have been regularly appointed to the Junior Administrative Grade with effect from January 1, 1986, the Tribunal has proceeded on the basis that the Selection Grade posts specified in the Schedule I to the Rules as falling in the Junior Administrative Grade have been upgraded to the Junior Administrative Grade and respondents, who were holding the posts which are specified as  
C falling in the Junior Administrative Grade in Schedule I as revised by the 1988 Amendment, must be deemed to have been appointed to the upgraded posts without requiring any fresh process of selection to be undergone by them. The Tribunal has also held that the 1988 Amendment providing for promotion to the Junior Administrative Grade from Grade I  
D (Selection Grade) being prospective could only govern the vacancies arising after the coming into force of the 1988 Amendment and further that the vested rights and legitimate expectations of the respondents could not be taken away by retrospective amendment of the Rules and by providing for fresh selection to the upgraded posts in the Junior Administrative Grade by adopting new criteria.

E

The appellants have not challenged the finding recorded by the Tribunal that the 1988 Amendment has brought about upgradation of the Selection Grade posts referred to in Schedule I as falling in the Junior Administrative Grade. We will, therefore, proceed on the assumption that  
F the posts specified as falling in the Junior Administrative Grade in Schedule I to the Rules, as amended by the 1988 Amendment, have been upgraded from Selection Grade to Junior Administrative Grade. The said upgradation, according to the respondents and as found by the Tribunal, was with effect from January 1, 1986. In order that respondents could be held to be entitled to be appointed to the upgraded post in the Junior  
G Administrative Grade, it was necessary that (i) they should have been holding that post on the date of upgradation, i.e., January 1, 1986; and (ii) they were eligible for appointment to the said post on January 1, 1986, the day of upgradation. We find that both these conditions are not satisfied by the respondents. On January 1, 1986, both of them were not holding a post  
H specified as falling in the Junior Administrative Grade in Schedule I to the

Rules, as amended by the 1988 Amendment. They came to hold such a post after January 1, 1986. P.C. Misra came to hold such post i.e. Joint Director (Agriculture and Marketing) on February 4, 1988 while M.N. Mathur came to hold such post i.e. Joint Director (Education) in November, 1986.

As regards eligibility for appointment to the Junior Administrative Grade it may be stated that the memorandum dated November 26, 1987 whereby the Junior Administrative Grade was introduced with effect from January 1, 1986, prescribed that in order that a person could be appointed to the Junior Administrative Grade he should have 12 years service with at least four years in Selection Grade. The same requirement is prescribed in the Note appended below sub-rule (2) of Rule 31, inserted by the 1988 Amendment, which provides that for vacancies occurring upto December 31, 1991, an officer with at least four years regular service in Grade I shall also be eligible for being considered for appointment to the Junior Administrative Grade provided he has got a minimum 12 years of combined regular service in Grade I and Grade II. This will show that both under memorandum dated November 26, 1987 and the Rules as amended by the 1988 Amendment, in order to be eligible for appointment to the Junior Administrative Grade it was necessary for an officer to have 12 years service and at least four years service in Grade I. Reference, in this context, may also be made to the Note appended below sub-rule (3) of Rule 31 inserted by the 1988 Amendment. In sub-rule (3) it is provided that the crucial date for determining the eligibility of officers for promotion to Junior Administrative Grade shall be 31st December of the year in which the vacancy has occurred. In the Note appended below sub-rule (3), it is provided that for promotion to the Junior Administrative Grade yearwise panel will be prepared from the year 1986, i.e., with effect from the year in which the Junior Administrative Grade has been created and the crucial date will be 31st December of the year to which the panel pertains. The memorandum dated November 26, 1987 has to be read along with sub-rule (3) of Rule 31 and if thus read it would cover cases of officers who were eligible on January 1, 1986, the date of introduction of the Junior Administrative Grade. In other words officers who fulfilled the conditions of eligibility contained in the said memorandum on December 31, 1985 were to be appointed on the Junior Administrative Grade with effect from January 1, 1986 on the basis of the said memorandum and the officers who acquired the eligibility for such appointment after December 31, 1985 would be governed by the Rules in view of the note appended below



- A sub-rule (3) of Rule 31 and they could be appointed to the Junior Administrative Grade in accordance with the provisions of Rule 31. Neither of the respondents fulfilled the criterion for eligibility mentioned in the memorandum because both of them did not have four years service in Selection Grade on January 1, 1986. They came to satisfy the said requirement of eligibility only after January 1, 1986. Since they could not satisfy
- B the conditions of eligibility upto January 1, 1986, they could not be deemed to have been regularly appointed to the Junior Administrative Grade with effect from January 1, 1986, the date when the Junior Administrative Grade was introduced and the Selection Grade post specified as falling in the Junior Administrative Grade in Schedule I are said to have been ungraded
- C to the Junior Administrative Grade. They could be appointed to the Junior Administrative Grade only by way of promotion in accordance with the Rules, as amended by the 1988 Amendment. Their cases were duly considered for such promotion but they were not found suitable for appointment and were not selected. The respondents have not been able to show any infirmity in the said selection. Under sub-Rule (1) of Rule 31 appointment of members of the Service to the Junior Administrative Grade is
- D required to be made by promotion on selection basis. Since the respondents were not found suitable for appointment to the Junior Administrative Grade they cannot claim appointment to the Junior Administrative Grade on the basis that officers junior to them have been appointed to the Junior Administrative Grade.
- E

We are unable to appreciate the view of the Tribunal that the 1988 Amendment could only govern vacancies arising after the coming into force of the 1988 Amendment and that the vested rights and legitimate expectations could not be taken away by retrospective amendment of the Rules. Since the Junior Administrative Grade was introduced for the first time with effect from January 1, 1986 the rule making authority was competent to make provision for appointment to the Junior Administrative Grade after it was introduced. Amendments introduced in rule 31 by the 1988 Amendment make provision for such appointments and we do not find any legal infirmity in the said provision.

F

G In the result, the appeals are allowed, the orders dated March 4, 1992 passed by the Tribunal in O.A. Nos. 1006/89, 1140/89 and 1202/89 are set aside and the said applications are dismissed. No orders as to costs.

G.N.

Appeal allowed.