

GUJARAT HIGH COURT

K.K. Baxi

Vs.

Union of India

Spl. Civil Appln. No. 1305. of 1984

(R.C. Mankad, J.)

26.08.1985

JUDGMENT

R.C. Mankad, J.

1. Petitioners, Members of Indian Administrative Service ('I.A.S.' for short) have filed this petition challenging the decision of the Central Government determining their seniority in the I.A.S. cadre by assigning them 1973 as their year of allotment. According to the petitioners, petitioner No. 1 K.K. Baxi is entitled to assignment of 1969 as his year of allotment, while petitioner No 2 C.P. Sampat is entitled to assignment of 1967 as this year of allotment in the I.A S. cadre.

2. In order to appreciate the claims made by the petitioners in this petition, it is necessary to set out in brief the history of service of both the petitioners. K.K. Baxi (hereinafter referred to as 'Baxi') joined service of the erstwhile State of Saurashtra in January, 1953 as Accounts Officer (Class I) on being selected by the Saurashtra Public Service Commission. He was promoted as Officer on Special Duty and ex officio Deputy Secretary to the Government of Gujarat, Finance Department with effect from April 11, 1974 in the time-scale of ₹ 1400.1800 which is considered to be equivalent to senior time scale of pay in I.A.S. cadre. Baxi was appointed as Director (Bureau of Public Enterprises and ex officio Deputy Secretary to the Government of Gujarat, Finance Department with effect from August 1, 1977 in the scale of ₹ 1600-2000. So far as C P. Sampat (hereinafter referred to as 'Sampat') is concerned, he joined services of the erstwhile State of Saurashtra in October, 1955 as Assistant Enquiry Officer. He was promoted to the gazetted post of Statistical Officer with effect from April 1, 1956 on being selected by Saurashtra Public Service Commission. He was promoted as Joint Director and ex officio Deputy Secretary to Government of Gujarat, Finance Department with effect from January 16, 1973 in the time-scale of ₹ 1400-1800 which is considered to be equivalent to senior time-scale of I.A.S. Sampat

appointed as Director (Budgetary Re-courses) and ex officio Deputy Secretary to the Government with effect from February 16, 1977, in the time-scale of Ra. 1600-2000. Both the petitioners were considered for selection to the I.A.S. cadre in the year 1979 under sub-rule (2) of rule 8 of the I.A.S. (Recruitment) Rules 1954 ("Recruitment Rules" for short). Both the petitioners were selected and consequently the State Government under its Notification dated August 2, 1979, appointed them as Deputy Secretaries and posted them as ex officio Directors of the Bureau of Public Enterprises and Budgetary Re-courses respectively. The Government of India, Ministry of Home Affairs, through its Department of Personnel and Administrative Reforms under Notification dated January 5, 1980, appointed the petitioner and one S.K. Mehta (hereinafter referred to as "Mehta") all of whom were non-State Civil Service Officers of the Gujarat State to the I.A.S. cadre on probation and allocated them to the cadre of Gujarat.

3. Ministry of Home Affairs, Government of India, was required to determine year of allotment of the petitioners under rule 3(3)(c) of the I.A.S. Regulation of Seniority Rules 1954 (hereinafter referred to as "Seniority" Rules). The State of Gujarat respondent No. 2 herein by its letter dated January 30, 1982, communicated to the petitioners that petitioners were allotted 1973 as the year of allotment under rule 3(3)(c) of the Seniority Rules. According to the petitioners, they were wrongly allotted 1973 as their year of allotment.

4. It is the petitioners case that Baxi was entitled to 1969 as his year of allotment and Sampat 1967 as his year of allotment. Petitioners contend that they were to be assigned the year of allotment: on the analogy of the provisions of rule 3(3)(b) of the Seniority, Rules. Baxi was appointed as Officer on Special Duty and ex officio Deputy Secretary to Government as stated above with effect from April 11, 1974 in the time scale of pay of ₹ 1400-1800 which is equivalent to senior time scale of pay of IAS cadre. Therefore, crucial date for determination of year of allotment on the analogy of rule 3(3)(b) of the seniority rules in case of Baxi on April 11, 1974. Nehtra Shenoy was a junior-most direct recruit in the IAS cadre who started officiating in a post equivalent to one held by Baxi with effect from April 11, 1974. Smt. Shenoy was assigned 1969 as her year of allotment. Therefore, contend the petitioners, on the analogy of rule 3(3)(b) of the seniority rules, Baxi is entitled to 1969 as his year of allotment in the IAS cadre of the Gujarat State.

5. As stated above Sampat was appointed as Joint Director and ex-officio Deputy Secretary in the time scale of ₹ 1400-1800 with effect from January 16, 1973. Scale of ₹ 1400-1800 is considered to be equivalent to the senior time scale of IAS cadre. G. R. Bishwas was a junior-most direct recruit in IAS who started officiating to the senior post with effect from June 19, 1979. Year of allotment assigned to G. R. Bishwas was 1967. Therefore, contend the petitioners, on the analogy of rule 3(3)(b) of the seniority rules, Sampat is entitled to 1967 as his year of allotment in IAS cadre of the Gujarat State.

6. In order to appreciate the contentions raised by the petitioners and the decision of the Government of India regarding the year of allotment, it is necessary to refer to the relevant provisions of law having bearing on the subject. Article 312 of the Constitution empowers the Parliament to provide by law for the creation of one or more All India Services common to the Union and the States and to regulate recruitment and the conditions of service of persons allotted to any such service. The Indian Administrative Service which was in existence even at the time of the commencement of the Constitution, was recognized as All India Service. As visualized by Article 312 of the Constitution, the Parliament has passed All India Services Act, 1951 (61 of 1951). Sub-sec. (1) of sec. 3 of that Act provides that the Central Government may after consultation with the State Government make rules for the regulation of recruitment and conditions of service of persons appointed to All India Services. In exercise of this power, the Central Government has made Indian Administrative Service (Appointment by Selection) Regulations, 1956 ("Selection Regulations" for short) Recruitment Rules, Seniority Rules, and Indian Administrative Service (Cadre) Rules, 1954 (66 Cadre" Rules for short) Rule 3 of the Cadre Rules provides for constitution of an Administrative Service cadre for each State or group of States. Rule 4 of the Cadre Rules provides that strength and composition of each of the cadres constituted under rule 3 shall be determined by Regulations made by the Central Government in consultation with the State Governments. The methods of recruitment to I.A.S. are prescribed in rule 4 of the Recruitment Rules. Recruitment of non-State Civil Service Officers (petitioners belong to this category) to the IAS is governed by rule 4(1)(c) and sub-rule (2) of rule 8 of the Recruitment Rules, which provides that the Central Government may on the recommendation of the State Government concerned and in consultation with the Union Public Service Commission ("Commission" for short) and in accordance with such regulations as the Central Government may after consultation with the State Governments and the Commission, from time to time make, recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the state who is not a member of the state civil service of that state, but who holds a gazetted post in a substantive capacity. Proviso to sub-rule (1) of rule 9 of the Recruitment Rules lays down that the number of persons recruited under sub-rule (2) of rule 8 shall not at any time exceed 15 per cent of the total number of posts calculated in the manner laid down in sub-rule (3) for filling up by such promotion and selection. Procedure for making appointment to the service by selection is laid down in the I.A.S. (Appointment by Selection) Regulations, 1956.

7. Rule 3 of the seniority rules provides for assignment of year of allotment. Provisions of said rule 3 insofar as they are relevant for our purpose read as under :

"3. Assignment of year of allotment.

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

x x x

(3) The year of allotment of an officer appointed to the service after the commencement of these rules, shall be.

x x x

(b) where the officer is appointed to the service by promotion in accordance with sub-rule (1) of 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 of those rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former :

Provided that the year of allotment of an officer appointed to the service in accordance with sub-rule (1) of rule 8 of the recruitment rules who started officiating continuously in a senior-post from a date earlier than the date on which any of the officer recruited to the service in accordance with rule 7 of those rules so started officiating shall be determined ad hoc by the Central Government in consultation with the state Government concerned.

x x x

(c) Where the officer is appointed to the service by selection in accordance with sub-rule (2) of rule 8 of the recruitment rules, such year as may be determined ad hoc by the Central Government on the recommendation of the state Government concerned and in consultation with the Commission :

Provided that he shall not be allotted a year earlier than the year of allotment of an officer appointed to the service in accordance with with sub-rule (1) of rule 8 of the recruitment rules, whose length of service in the state civil service is more than the length of continuous service of the former in connection with the affairs of the State".

8. Rule 4 of the seniority rules deals with seniority of officers. The provisions of the said rule insofar as they are relevant for our purpose read as under :

"4. Seniority of officers - (1) The seniority of officers inter se shall be determined in accordance with the provisions hereinafter contained in this rules.

x x x

(4) The seniority of officers appointed to the service on or after the 11th day of April, 1958, who are assigned the same year of allotment shall be in the following order, that is to say -

(i) x x x

(ii) officers appointed to the service by selection in accordance with sub-rule (2) of rule 8 of the recruitment rules, ranked inter se in the order, in which their names are arranged by the Commission for the purpose of selection to the service."

9. Year of allotment of non-State Civil Service Officers appointed to the IAS by selection under sub-rule (2) of rule 8 of the recruitment rules is governed by rule 3(3)(c) of the seniority rules read with Home Department letter No. 14014/48/77-AIS(I) dated June 6, 1978 Rule 1(3)(c) of the seniority Rules provides that year of allotment of such officers shall be determined ad hoc by the Central Government on the recommendation of the State Government concerned and in consultation with the commission ; provided that he shall not be allotted a year earlier than the

year of allotment of an officer appointed to the service in accordance with sub-rule (1) of rule 8 of the recruitment rules whose length of service in the state civil service is more than the length of continuous service of the former in connection with affairs of the State. It is in the light of the said provision contained in Rule 3(3)(c) of the Seniority Rules that the Central Government in consultation with the Commission laid down the guidelines for ad hoc determination of year of allotment of non-State Civil Service Officers appointed to IAS by selection, in the Home Department Letter dated June 6, 1978 referred to above. These guidelines were as follows :

"The Government of India have decided that seniority of a non-State Civil Service Officer appointed to IAS by selection shall be determined in consultation with UPSC on the analogy of rule 3(3)(b) of the IAS. (Regulation of Seniority) Rules, 1954 subject to the proviso to rule 3(3)(c) of the said rules.

2. The question whether there should be a depression of year of allotment of a non-State Civil Service Officer on account of the fact that he had been rejected by the Selection Committee on an earlier occasion, has been examined in consultation with the UPSC. It has been decided that a non-State Civil Service Officer who was considered unsuitable by the selection committee for appointment to the IAS on an earlier occasion should not get a year of allotment higher than the year of allotment assigned to the non-State Civil Service Officer who was also considered along with the former in earlier year but was found suitable by the selection committee and was therefore, appointed to IAS earlier than him. Such an officer may, however, get the same year of allotment but he should be placed below the non-State Civil Service Officer allotted the same year of allotment who was selected and appointed to the IAS in an earlier year in preference to the non-State Civil Service Officer appointed to IAS later.

3. It has also been decided in consultation with UPSC that is between two or more non-State Civil Service Officers selected at the same time, the officer who was placed higher in order of merit would be senior to the officers placed lower in order of merit."

10. The provision contained in paragraph 3 of the aforesaid letter dated June 6, 1978, was subsequently deleted by the Government of India with the concurrence of the commission. A letter dated February 15, 1985 in that regard addressed to the Chief Secretary to the Government of Gujarat by the Department of Personnel and Administrative Reforms, Ministry of Home Affairs, Government of India reads as under:-

"I am directed to refer to para 3 of this Department's Circular No. 14014/48/77/AIS(I), dated 6-6-1978 on the above mentioned subject and to say that provisions contained in para 3 of this Circular have been reviewed by the Government of India. It was laid down in this para that as between two or more non-State Civil Service Officers selected for appointment to IAS at the same time, the officer who was placed higher in order of merit will be senior to the officer placed lower in the order of merit. However, a non-State Civil

Service Officer appointed to IAS later than another non-State Civil Service Officer can be given a higher year of allotment if both officers do not belong to the same select list. Thus, only officers selected at the same time are affected by this restriction in the matter of seniority. It is, therefore, felt that it will be more appropriate to remove this restriction which operates only in respect of officers simultaneously selected. It has, therefore, been decided with the concurrence of the Union Public Service Commission that the provisions of para 3 of the Circular No. 14014/48/77-AIS(I) dated 6-6-1978 be deleted."

11. It would thus be seen that petitioners who were non-State Civil Officers were to be assigned year of allotment on the analogy of rule 3(3)(b) of the seniority rules subject to proviso to rule 3(3)(c) of the said rules. It is not in dispute that on the analogy of rule 3(3)(b) Baxi and Sampat were entitled to assignment of 1969 and 1967 respectively as their years of allotment. It is also not in dispute that there is no question of depressing the year of allotment of Baxi and Sampat in accordance with proviso to rule 3(3)(c) of the seniority rules. It, however, appears that Baxi, Sampat and Mehta were selected to the IAS cadre at the same time in 1979. In the select list V. T. Shukla was placed first, but he preferred not to be appointed to IAS cadre. The positions of Mehta, Baxi and Sampat in the select list were second, third and fourth respectively. In other words, Mehta ranked above both Baxi and Sampat in the select list. The Central Government took the view to the effect that in view of paragraph 3 of the guidelines contained in the letter dated June 6, 1978, referred to above. Baxi and Sampat who ranked below Mehta in the select list could not be placed higher than Mehta in seniority in the IAS cadre. It is not in dispute that on the analogy of rule 3(3)(b) of the seniority rules, Mehta was entitled to allotment of 1973 as his year of allotment and as in the case of Baxi and Sampat there was no question of depression of his year of allotment in accordance with the proviso to rule 3(3)(c) of the seniority rules Mehta was, therefore, assigned 1973 as his year of allotment in the IAS cadre of Gujarat. Since in the view of the Central Government. Baxi and Sampat though they were entitled to assignment of 1969 and 1967 respectively as their years of allotment, could not be placed above Mehta in the seniority list of IAS cadre of Gujarat, they were assigned the same year of allotment which was assigned to Mehta namely 1973. The grievance of the petitioners is that they should have been assigned the year of allotment on the analogy of Rule 3(3)(b) and there was no question of depressing the year of allotment to 1973, the year of allotment which was assigned to Mehta.

12. There is considerable force in the contention raised by the petitioners. As observed above, Rule 3 of the Seniority Rules deals with assignment of year of allotment and clause (c) of sub-rule 3 of the said Rule 3 empowers the Central Government to determine the year of allotment in case of officers selected in accordance with sub-Rule (2) of Rule 8 of the Recruitment Rules on ad hoc basis on the recommendation of the State Government concerned and in consultation with the Commission. Clause (c) of rule 3(3) itself does not lay down any criterion for the determination of the year of allotment in case of officers selected in accordance with sub-rule (2) of rule 8 of the Recruitment Rules, but leaves it to the Central Government to determine it on ad hoc basis on recommendation of the State Government concerned in consultation with the

Commission. It may be recalled that petitioners are officers appointed to I.A.S. by selection in accordance with sub-rule (2) of rule 8 of the Recruitment Rules and, therefore, assignment of year of allotment to them will be governed by clause (c) of sub-rule(3) of rule 3 of the Seniority Rules. It was in exercise of the power conferred on it by the said clause (c) that the Central Government issued the letter or circular dated June 6, 1978 referred to above. It amongst other things provided that seniority of non-State Civil Service Officers appointed to I.A.S. by selection shall be determined in consultation with the Commission on the analogy of rule 3(3)(b) of the Seniority Rules. As pointed out above, rule 3 deals with assignment of year of allotment. Therefore when paragraph 1 stated that seniority of non-State Civil Service Officers shall be determined on the analogy of rule 3(3)(b) of the Seniority Rules, what was meant was that assignment of year of allotment will be on the analogy of rule 3(3)(b). In other words, the method of assignment of year of allotment to the State Civil Service Officer promoted in accordance with sub-rule (1) of rule 8 of the Recruitment Rules was to be applied to non- State Civil Service Officers selected in accordance with sub-rule (2) of rule 8 of the Recruitment Rules subject to the proviso to clause (c) of rule 3(3) of the Seniority Rules. Baxi and Sampat, petitioners herein were entitled to assignment of years 1969 and 1967 respectively as their years of allotment on the analogy of rule 3(3)(b). As already observed above, there is no question of depressing their years of allotment under proviso to rule 3(3)(c) of the Seniority Rules.

13. The question is whether their years of allotment are required to be depressed in view of paragraph 3 of the letter dated June 6, 1978. Paragraph 2 of the said letter deals with the question of depressing the year of allotment in case of non-State Civil Service Officer who was considered unsuitable by the Selection Committee, for appointment to I.A.S. on an earlier occasion when another non-State Civil Service Officer considered along with him was found suitable by the Selection Committee. Paragraph 2 deals with case of non-State Civil Service Officer who is entitled to assignment of earlier year of allotment than non-State Civil Service Officer who is selected on an earlier occasion when both the officers were considered for selection and the former was found unsuitable. It would thus appear that this paragraph deals with the case of two officers who had competed for selection to I.A.S. at the same time, but the officer who is entitled to later year of allotment gets selected and the officer who is entitled to earlier year of allotment is found unsuitable. The officer who is found unsuitable gets selected on the subsequent occasion, by which time, the officer entitled to later year of allotment is already appointed to I.A.S. In such case, lays down paragraph 2, the officer who is selected on subsequent occasion is to be given the same year of allotment as the officer who is selected earlier and he is also to be placed below such officer in the seniority. No other provision contained in the letter dated June 6, 1978 deals with depression of the year of allotment. In other words, paragraphs 1 and 3 do not make any provision for depressing year of allotment.

14. In the present petition, I am not concerned with the provisions contained in paragraph 2, since both the petitioners and Mehta were considered for the first time for selection to I.A.S. in 1979, and they were selected at the same time. I have referred to the provisions contained in

paragraph 2 in detail only to emphasise that it deals with assignment of year of allotment. In other words, paragraphs 1 and 2 of letter dated June 6, 1978 deal with assignment of year of allotment, on the other hand paragraph 3 of the said letters deals with inter se seniority as between two or more non-State Civil Service Officers selected at the same time. Assignment of year of allotment and inter se seniority are subjects which are separately dealt with in the Seniority Rules. Rule 3 deals with assignment of year of allotment, while rule 4 deals with seniority. The question of fixing inter se seniority between the officers would arise only when the year of allotment is same. If years of allotment are different, it is obvious that the officer who is allotted earlier year of allotment, would be senior to the officer who is assigned later year of allotment. For example, the officer who is assigned 1960 as his year of allotment, would necessarily be senior to the officer who has been assigned 1962 as his year of allotment. However, if the year of allotment is the same, a question would arise as to how inter se seniority is to be reckoned. This question is resolved by the provisions contained in Rule 4. We are concerned with non-State Civil Service Officers, and if such officers, are assigned the same year of allotment, their inter se seniority is to be adjusted in accordance with clause (ii) of sub-rule (4) of rule 4 of the Seniority Rules. It is only in case where the year of allotment is same that the officers appointed to the service by selection in accordance with sub-rule (2) of rule 8 of the Recruitment Rules that their seniority is to be fixed in the order in which their names are arranged by the Commission for the purpose of selection to the service.

15. Paragraph 3 of the letter dated June 6, 1978 deals with the question of inter se seniority and it has to be read in context with clause (ii) of sub-rule (4) of rule 4 of the Seniority Rule. It makes the same provisions which is contained in said clause (ii) It may again be emphasized that paragraph 3 of the said letter does not deal with the question of assignment of year of allotment. If the said paragraph 3 is read in the context of the said clause (ii) of sub-rule (4) of rule 4, it is obvious that it deals with inter se seniority of the officers in case where year of allotment is same. Paragraph 3 would have no application when years of allotment are different. It is significant to note that as in the case dealt with in paragraph 2 it does not speak about depression of year of allotment in case of officers who are selected in accordance with sub-rule (2) of rule 8, that is officers belonging to non- State Civil Service category. Normal rule for assignment of year of allotment is one contained in clause (b) of sub-rule (3) of rule 3 of the Seniority Rules. In other words, year of allotment is to be assigned on the analogy of said clause (b), though it does not apply to such officers. However, departure is made only in case of officers specifically dealt with in paragraph 2 of the letter dated June 6, 1978. An officer who has been found to be unsuitable on an earlier occasion when officer who is entitled to assignment of year of allotment later than him is selected and appointed, has to be assigned the same year of allotment as latter officer and placed below him in the seniority list. Thus assignment of year of allotment is done under the power conferred on the Central Government under clause (c) of sub-rule (3) of rule 3 of the Seniority Rules. It is the year of allotment which is determined in case of such officers, and one year of allotment is same, the officer who is selected and appointed earlier would necessarily become senior to the officer who is selected and appointed later. Thus there is depression of year

of allotment in case of officer who has been found unsuitable on an earlier occasion. However, except in case falling under paragraph 2, the question of depression of year of allotment or fixation of inter se seniority would not arise in case where the officers are assigned different years of allotment. In my opinion, therefore, paragraph 3 of the latter dated June 6, 1978, comes into play only when the officers are assigned the same year of allotment. To interpret the paragraph in any other manner would make it inconsistent with the provisions contained in rules 3 and 4 of the Seniority Rules and would also lead to anomalous position. Let us consider a case of an officer junior to the petitioners who is selected to I. A. S. in the year subsequent to the year in which the petitioners were selected. Such officer, let us assume, was not found unsuitable on any earlier occasion and was given the first place in the select list. If the year of allotment of such officer on the analogy of rule 3(3) (b) is 1972, he would rank senior to the petitioners and Mehta by mere fortuitous circumstance that his case came to be considered for the first time after the petitioner and Mehta were considered and he was found suitable. I have, therefore, no doubt in my mind that paragraph 3 of the aforesaid letter deals with the question of inter se seniority when same year of allotment is assigned. It fact it was not necessary to make provision contained in paragraph 3 since such provision already existed in clause (ii) of sub-rule 4 of the Seniority Rules. Provision contained in rule 3 was redundant and it was perhaps therefore, that subsequently it was deleted. In the view which I am taking I do not consider it necessary to enter into the controversy whether deletion of paragraph 3 is retrospective or prospective. If it is considered to be prospective as urged on behalf of the respondents, it would create further complication and anomalies which, in the view which I am taking, I do not propose to discuss.

16. In the light of the above discussion, it must be held that Baxi was entitled to assignment of 1969 as his year of allotment and Sampat 1957 as his year of allotment. The Central Government was wrong in taking the view to the effect that the petitioners should be assigned 1973 the year which was assigned to Mehta as their year of allotment and that they should rank below Mehta in the Seniority list. Since Baxi and Sampat are entitled to assignment of year of allotment earlier than the year which is assigned to Mehta, they would be senior to Mehta. The order No. AIS-1879-1-G dated January 30, 1982, Annexure 'F' insofar as it assigns 1973 as the year of allotment to the petitioners deserves to be quashed and set aside.

17. In the result, this petition is allowed. The order No. AIS-1879-1-G dated January 30, 1982, Annexure 'F' to the petition insofar as it assigns 1973 as the year of allotment to the petitioners is quashed and set aside. It is declared that petitioner No. 1 K. K. Baxi is entitled to assignment of 1969 as his year of allotment and petitioner No. 2 C. P. Sampat is entitled to assignment of 1967 as his year of allotment. Respondents are directed to assign the said years of allotment to the petitioners and fix their seniority accordingly within two months from the receipt of the writ of this Court. Respondents are further directed to grant promotions, arrears of salary, pension, arrears of pension and other consequential benefits to the petitioners which they had come or would become entitled to as a result of assignment and seniority as stated above within two months of the date of decision assigning the years of allotment and seniority as directed above. It

is further declared that all promotion; given before the decision regarding assignment of years of allotment is rendered as stated above, will be provisional and shall be regulated accordingly.

18. Rule accordingly made absolute with costs. Respondent No. 1 to bear the costs of the petitioners. Writ to be sent down forthwith.

Petition allowed : Rule made absolute.