

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

CA No. 2254/99

New Delhi: this the 19th day of MARCH, 2001

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALI, MEMBER (J)

1. B. L. Jain,
S/o Shri H. C. Jain,
R/o B-314, Ashok Nagar,
Delhi-93.

2. N. K. Jain,
S/o Shri Jai Paul Jain,
R/o Krishi Kunj,
New Delhi-12.

3. Rohtas,
S/o Shri M. C. Sharma,
R/o IARI Campus,
New Delhi-12

All employed as Asstt. Admn. Officers in
the Office of IARI, Pusa,
New Delhi

....Applicants.

(By Advocate: Shri B. B. Rayal)

Versus

Union of India,
through
Secretary,
Dept. of Agriculture Research & Education,
Govt. of India-
Cum Director General,
ICAR,
Krishi Bhawan,
New Delhi-1

2. The Director,
IARI,
Pusa,
New Delhi.

3. Smt. Rakesh Saini,
Asstt. Admn. Officer,
IARI,
Pusa,
New Delhi-12.

.... Respondents.

(By Advocate: Ms. Geetanjali Goel).

ORDER

S.R. Adige, VC(A):

(3)

Applicants impugn respondents' order dated 19.11.98 (Annexure-A) and dated 31.5.99 (Annexure-B). They seek regular promotion/seniority as Superintendents from 1985 and 1986 respectively with all consequential benefits.

2. Shri V.P. Saini & 3 others had filed OA No. 1683/87 challenging respondents' order dated 2.10.87 promoting the present applicants (who were respondents in that OA) from the post of Assistants to that Superintendents (Rs. 550-900) without holding a Ltd. Departmental Competitive Exam. (LDCE) in 1987. They prayed that the promotions be set aside and respondents be directed to hold the exam. as envisaged in Recruitment Rules within a specified schedule of time before making any appointment to the post of Superintendent.

3. By order dated 3.7.89, the OA was allowed to the extent that appointments of the present applicants as Supdt. were quashed and set aside. Official respondents were directed to treat the appointments of the present applicants as adhoc and continue till the vacancies by exams. in 1985, 1986, 1987 and 1988 were filled in. If they got selected, their services as Supdts. would be regularised but in case any of them failed to qualify in the examination, he would have to be reverted. The Tribunal had further directed to hold exams. for the vacancies in 1985, 1986, 1987 and 1988 separately after a gap of 2 months each beginning from August, 1989 in which all the eligible

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candidates who had completed 3 years' service as Stenographer/Assistant on 1.1.85 would be eligible to sit in the LDCE 1985 and similarly for the years 1986, 1987 and 1988.

4. Thereupon official respondents conducted LDCEs for the year 1985, 1986, 1987 and 1988 for the post of Superintendent under the LDCE quota i.e. 33.1/3% quota and remaining 66.2/3% quota being filled up on the basis of seniority-cum-fitness.

5. Respondents' order dated 19.9.90 (Annexure-A4) reveals that Applicant No.1 Shri B.L.Jain and Applicant No.2 Shri N.K.Jain passed the exam. in 1985 but were regularised as Supdts. on 29.11.89 while Applicant No.3 Shri Rohtash who passed the Exam. in 1986 was regularised as Supdt. on 31.1.90.

6. Meanwhile a RA seeking review of the Tribunal's order dated 3.7.89 filed by one of the applicants in that OA was rejected on the ground that applicant had to first pass the LDCE and if he had any grievance in regard to his seniority, he could represent thereafter.

7. Thereafter the present applicants filed OA No.930/92 alleging that the Tribunal's order dated 3.7.89(supra) had not been properly implemented. In particular they impugn respondents' order dated 19.9.90 (supra) the seniority list of June, 1991 and consequential promotion order based on the aforesaid seniority list dated 09.11.91 and 14.1.92. They pray that a direction be issued for implementation of the

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directions issued in the OA and the seniority list should be quashed. They pray that they should be regularised relating to LDCEs which were conducted later on and in which they had qualified and their names should be incorporated in the seniority list according to the seniority norms as per the direction of the Tribunal.

8. OA No.930/92 was disposed of by order dated 24.2.98 (Annexure-A7) with the directions reproduced in the body of impugned order dated 19.11.98. A perusal of aforesaid order dated 19.11.98 reveals that pursuant to the same, a draft proposed seniority list adjusting applicants according to the year in which LDCE vacancies had arisen, was circulated for the purpose of inviting objections, if any, from the affected persons. After considering the objections and the relevant rules and orders, respondents decided not to grant seniority to the applicants from the date and year to which the LDCE relates for the reasons contained in the body of that order which is now impugned in the present OA.

9. We have heard applicants' counsel Shri B.B.Raval and respondents' counsel Ms.Gosel. We have perused the materials available on record and considered the matter carefully.

10. A similar issue had occasion to be examined by Full Bench of CAT PB in its order dated 5.2.93 in T.A.No.43/87 Ashok Mehta Vs. Regional Provident Fund Commission and connected case reproduced in Full Bench Judgments of CAT 1991-94 Volume III Bahri Brothers, Delhi, whose conclusions are reproduced below:-

(b)

"8. In the light of our above discussion, we answer the questions referred to us in the context of the facts of these cases as follows:-

(a) The officers promoted on the basis of seniority subject to the rejection of unfit and those promoted on the result of the competitive examination shall be treated as promotees.

Persons promoted by both the modes of promotion shall be included in a common seniority list.

Their inter se seniority has to be determined on the basis of their total length of service which will be reckoned from the actual date of their promotion in accordance with the relevant recruitment rules.

Promotion by way of adhoc or stop-gap arrangement made due to administrative exigencies and not in accordance with rules cannot count for seniority.

Principle 'B' laid down by the Supreme Court in the Direct Recruit Class II Engineering Officers' Association and others Vs. State of Maharashtra and others will apply as explained by the Supreme Court in Keshav Chandra Joshi and others etc. Vs. Union of India and others only to cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue to the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules.

(b) The rota quota principle of seniority is not applicable for determining the seniority to the cadre of UDCs in these cases.

(c) The order of the Supreme Court in Mohinder Kumar's case constitutes binding precedent as held by the Full Bench of the Tribunal in R.D. Gupta's case even after the judgment of the Supreme Court in the Direct Recruit Class II Engineering Officers' Association case.

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(X)

(d) As the correct principles for determining seniority in the cadre of UDCs were clarified by the Supreme Court in Mohinder Kumar's case on 11.8.87, and as cases in regard to seniority in the cadre of UDCs have been pending since long, it would not be just and proper to decline relief in regard to recasting of the seniority list on the ground that it would have far reaching and unsettling effect in managing the cadres of not only of the UDCs but also the posts in the higher grades.

11. In our view the aforesaid ratio of the Full Bench order in Ashok Mehta's case (*supra*) is fully applicable to the facts and circumstances of the present case. As in that case, so in the present one, the officers promoted on the basis of seniority and those promoted on the result of the competitive exam. have to be treated as promoted, and included in a common seniority list, their inter se seniority being determined on the basis of their total length of service, to be reckoned from the actual date of their promotion in accordance with the relevant recruitment rules. While promotions by way of stop gap arrangement made due to exigencies and not made in accordance with rules would not be counted for seniority, Principle 'B' in the Direct Recruits' case (*supra*) would not be applicable because the initial appointment was not made deliberately in disregard of the rules and the incumbent did not continue on the post on adhoc basis for 15-20 years, without reversion till the date of regularisation of service, there being power in authority to relax the rules. The rota quota principle would also not be applicable as the officers promoted on the basis

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of seniority as well as those promoted on the result of competitive exam. have to be treated alike as promotedes. Nothing has been shown to us to establish that the aforesaid Full Bench ruling in aforesaid Ashok Mehta's case (supra) has been stayed, modified or set aside.

12. In the result this OA is disposed of with a direction to respondents to determine the seniority of the applicants as Superintendents in accordance with the principles laid down in Ashok Mehta's case (supra) by a detailed, speaking and reasoned order as expeditiously as possible and preferably within 4 months from the date of receipt of a copy of this order. If, while so determining the seniority of the applicants, any person is likely to be affected adversely, respondents will put him ~~to~~ to notice and consider his objections, if any before altering his seniority.

13. The OA is disposed of in terms of para 12 above.
No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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