

Central Administrative Tribunal
Principal Bench

O.A. 2296/1998

New Delhi this the 9 th day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Jagdish Chander son of
late Shri Lal Mani,
R/o 1310, R.K. Puram,
New Delhi.

... Applicant.

(By Advocate Shri M.M. Sudan, Sr. Counsel)

Versus

1. Union of India through the
Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
2. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi. ... Respondents.

(By Advocates Shri E.X. Joseph, Sr. Counsel with
Shri S.P. Sharma)

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Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant has filed this application being aggrieved by the provisional seniority list of Under Secretaries issued by the respondents dated 28.4.1998. He has stated that he had submitted objection to the same but the same has not been considered by the respondents nor any final seniority list issued and hence, his apprehension is that they are going to fill the next higher post of Deputy Secretary without deciding the points he has raised in the representation.

2. The respondents in their reply have submitted
that there is no cause of action in favour of the

applicant because there is a proposal for amendment of the Rules for promotion to the post of Deputy Secretary and those amendments are yet to take place and without finalisation of the promotion Rules, no DPC is intended to be convened. They have, therefore, submitted that the apprehension of the applicant is wrong. The respondents have also given the details of the applicant's representation dated 6.10.1998 which they have stated is under consideration. The O.A. has been filed on 20.11.1998 and the counter affidavit on behalf of Respondents on 8.1.1999.

3. The applicant was appointed as direct recruit Assistant with the respondents on 5.2.1972 against the reserved vacancy of Scheduled Caste (SC). A provisional inter-se seniority between the direct recruitment and promotees in the grade of Assistants was drawn up in 1976 on the basis of the length of service and not on the basis of rota-quota in the ratio of 1:1, as contended by the applicant. On the basis of this seniority list, one Shri P.N. Dogra was promoted as Section Officer (SO) on ad-hoc basis w.e.f 9.8.1976 and the applicant was promoted to the same post on ad-hoc basis w.e.f. 30.4.1979. In the said seniority list, the applicant's name appeared at Serial No.112 and the name of the other SC candidate was at Serial No.66. This seniority list was revised in 1981 in the ratio of 1:1 and in this list applicant's name appeared at Serial No. 192 and Shri P.N. Dogra's name at Serial No. 211, respectively. The applicant was appointed as SO on regular basis w.e.f. 28.1.1982 on the basis of the Limited Departmental

Examination. However, Shri Dogra continued to work as SO on ad-hoc basis till 22.5.1984 and appointed on regular basis w.e.f. 23.5.1984.

4. The applicant had filed an earlier application (OA 177/94) claiming notional promotion to the grade of SO w.e.f. 9.8.1976 when his immediate junior Shri P. N. Dogra was given that promotion and to step up his pay with all consequential benefits. The O.A. was dismissed by the Tribunal vide order dated 21.3.1995. Thereafter, the applicant filed an appeal in the Hon'ble Supreme Court vide Civil Appeal No.3634/96 which was disposed of by the order dated 26.2.1998. The respondents have stated that in terms of the judgement of the Supreme Court, they have paid the applicant all ^{the} arrears of pay. Thereafter, the applicant had submitted a representation on 6.10.1998 and this O.A. in which he has claimed that his promotion as Under Secretary should be ante-dated with effect from August, 1984 when he completed 8 years of service as SO and for a further direction to issue a revised seniority list. Shri M.M. Sudan, learned Sr. counsel has submitted that the revised seniority list of Under Secretary ^{has} has to be issued showing the correct position of the applicant for further promotion to the rank of Deputy Secretary.

5. We have seen the reply filed by the respondents and heard Shri E.X. Joseph, learned Sr. counsel. The respondents have stated that the seniority list of SOs is under dispute because of an arbitration award relating to inter-se seniority in the case of Assistants and SOs which is sub-judice in the High Court.

Learned Senior Counsel has also submitted that the relief granted by the Supreme Court in the aforesaid case only relates to payment of money to the applicant as directed therein which has already been implemented. He has, therefore, submitted that there is no violation of the order passed by the Hon'ble Supreme Court. They have also submitted that as per the earlier seniority list issued in 1981, there were two Assistants, who belong to the SC category who were senior to the applicant and one of them, Shri Sukh Pal, who is presently holding the post of Under-Secretary is still in service. They have submitted that as per the modified seniority list, Shri Sukhpal is at Serial No. 154, the applicant is at Serial No. 192 and Shri P.N. Dogra is at Serial No. 211. Accordingly, they have submitted that the applicant cannot be given benefits which would adversely affect the rights of Shri Sukhpal, who is senior to him and was also not made a party in the present application. Therefore, they have submitted that the request of the applicant for notional promotion as SO w.e.f. 9.8.1976 and thereafter as Under Secretary against the SC vacancy after completion of 8 years is not justified, keeping in view also the judgement of the Supreme Court in the appeal filed by the applicant.

6. In the rejoinder filed by the applicant, he has submitted that the above submissions of the respondents have been made with mala fide intention so as to deny him the consequential benefits of ante-dating his promotion as SO by advancing new arguments which they had not submitted earlier. On behalf the applicant, it was also contended that Shri Sukhpal, the 'so called senior

person belonging to reserved category has not represented or appeared before any Court for his service interests and, therefore, at this stage the seniority cannot be modified without the knowledge and concern of the Hon'ble Supreme Court. The applicant has reiterated his contentions in the O.A. and has prayed that the application may be allowed.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. We are unable to agree with the contentions of the applicant in paragraph (f) of the preliminary objection in the rejoinder with reference to the non-impleadment of Shri Sukhpal who the respondents have stated is shown as senior to the applicant who also belongs to the reserved category. Merely because he has not filed an application in a judicial forum or represented earlier cannot mean that he will not be interested in defending his interests. So he should have been impleaded as a necessary party in this OA.

9. In the rejoinder, the applicant has ^{also} contended that the dispute of seniority in the post of SO because of an arbitration award cannot be any ground for withholding finalisation of the seniority of Under Secretaries unless the seniority list of SOs is finalised which as per the information of the applicant has not taken place. The respondents on the other hand have submitted that the award of arbitration relating to seniority of Assistants and SOs in the ICAR Headquarters

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is sub-judice before the High Court. The feeder category for promotion to the post of Under Secretary is SOs and as it appears from the applicant's own contention that unless that seniority list is finalised, the seniority list of Under Secretaries cannot also be done. With regard to the provisional seniority list which has been challenged here, the respondents have further submitted that they have also proposed amendment in the Recruitment Rules and no DPC can be held unless this is done.

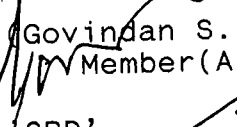
10. In the above facts and circumstances of the case, the application is, therefore, liable to be dismissed on the ground of non-joinder of necessary parties. However, the respondents should take such action, as they may be advised, to try and expedite finalisation of the seniority list of Under Secretaries which would also depend upon the decision of the High Court, where the arbitration award relating to inter se seniority in the grade of Assistants and SOs in the ICAR Headquarters is stated to be pending.


11. The respondents have issued a Circular dated 4.9.1989. In this circular, it is stated that the Governing body of ICAR had approved relaxation in the Recruitment Rules to the extent that the ad hoc service rendered by the employees in the feeder grade of Assistants and Section Officers till 21.12.1985 will be counted as approved service while considering them for promotion to the post of SOs and Under Secretaries respectively. In the facts of the case, this circular will not assist the applicant as he was only deemed to have been promoted with effect from 9.8.1976, that is the

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date when Shri Dogra was promoted for purposes of stepping up of his pay in the feeder category of SO, and had not rendered any ad hoc service in that grade prior to the cut off date, that is 21.12.1985.

12. In the result, the O.A. fails and is dismissed. No order as to costs.


(Govindan S. Tampi)
Member(A)
SRD'


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)