

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 2455/98

OA No. 365/99

New Delhi, this the 28th day of November, 2000

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HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

OA 2455/98

Sh. G.L.Madan

....Applicant.

(By Advocate: Smt. Rajkumari Chopra)

Vs.

Union of India & Anr.

(By Advocate : Sh. P.H.Ramchandani)

OA 365/99

Sh. Krishan Pal & Ors.

(By Advocate : None)

VS.

Union of India & Anr.

(By Advocate :Sh. P.H.Ramchandani)

1. To be referred to the reporter or not? YES ✓
2. To be circulated to other benches of the Tribunal? YES ✓

CR
(V. Rajagopala Reddy)
Vice-Chairman(J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2455/98
OA No.365/99

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HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

OA No.2455/98

G.L. Madan,
S/o Sh. P.L. Madan,
2507/192, Tri Nagar,
Delhi-110035.

...Applicant

(By Advocate Sh. V.S.R. Krishna, proxy for Mrs. Raj Kumari
Chopra, Advocate)

-Versus-

1. Union of India
through the Secretary (Health),
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi-110 011.
2. Secretary,
Department of Personnel & Training,
New Delhi. ...Respondents

(By Advocate Shri P.H. Ramchandani)

OA No.365/99

1. Krishan Pal,
3/135, Sector 201 005.
Sahibabad-201 005
(Distt. Ghaziabad).
2. R.R. Sri Prakash,
1076, Laxmi Bai Nagar,
New Delhi-110 023.
3. Kulwant Rai,
B-37, Moti Bagh-I,
New Delhi-110 048.
4. Sh. S.P. Singh,
148-B, Moti Bagh,
New Delhi-110 048.
5. Sh. M.S. Kasottia,
B-630, Hastsal Colony,
Uttam Nagar,
New Delhi-110 059.
6. Bharat Bhushan,
370, A/3, Chiragh Delhi,
New Delhi-110 017.
7. P. Madhusoodanan,
85-G, Sector-4, Gole Market,
New Delhi-110 001.

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8. B.S. Bist,
Sector V/182,
R.K. Puram,
New Delhi-110 029.

9. R. Dayanandan,
24-P, Sector-4, DIZ Area,
Gole Market, New Delhi.

10. Smt. Shashi Kataria,
RZ 67/345, Mohan Nagar,
Pankha Road,
New Delhi-110 046.Applicants

(None for the applicants)

-Versus-

1. Union of India
through the Secretary (Health),
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi-110 011.

2. Secretary,
Department of Personnel & Training,
New Delhi.Respondents

(By Advocate Shri P.H. Ramchandani)

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

As these two OAs raise a common question of law,
they are disposed of by a common order.

2. The validity of the seniority list of UDCs under the Central Secretariat Service Rules, 1962, (for short CSS, Rules) prepared for the purpose of their promotion as Assistants, on ad hoc basis as well as on regular basis and the action of the respondents in seeking to revert the applicants from the post of Assistant (Ad hoc) to UDC are under challenge in these two OAs.

3. The applicants were initially appointed as LDCs and thereafter they were appointed in UDCs grade by limited departmental examination during 1987-89 in the Ministry of Health and Family Welfare. After having

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rendered 7 years service as UDC, the applicants were selected and appointed to the posts of Assistant on ad hoc basis, in accordance with the recruitment rules. It is submitted that they were posted against regular sanctioned posts. As they were now sought to be reverted without assigning any reason the applicants brought this OA.

4. The recruitment/appointment of Assistants is governed by the CSS Rules, 1962. Rule 13 (6) provides that 50% of the substantive vacancies should be filled by direct recruitment and the remaining 50% should be filled by promotion of persons included in the select list for the Assistant Grade it shall be made in the order of seniority. As per sub rule (7) 'temporary vacancies' in the Assistant Grade shall be filled by temporary promotion on the basis of seniority from the UDCs of CSS who are within the range of seniority. The plea of the applicants is that for the purpose of temporary promotion a common seniority list has to be prepared from amongst all the members of the service in UDC grade, in all the cadres in the Secretariat viz. of all the Ministries by the Department of Personnel & Training which is the cadre controlling authority and on the basis of their relative seniority of the members, promotion/transfers etc. have to be effected. It, therefore, follows that even for the purpose of reversion of an Assistant on ad hoc promotion, the same common seniority list has to be followed and only the juniormost member of the service should be reverted first. It is their specific case that the individual Ministry cannot be treated as a separate cadre either for the purpose of promotion or for reversion. The learned counsel places reliance upon the definition of the expressions, 'cadre',

'common seniority list' and the 'range of seniority' etc. to contend that the rules have been followed only in their breach resulting in the juniors occupying the posts of Assistants whereas the senior members are sought to be reverted. The learned counsel for the applicants Shri V.S.R. Krishna vehemently contends that in spite of many juniors continuing in the various cadres in various Ministries as ad hoc Assistants, the applicants though they are seniors are sought to be reverted. (29)

5. The application is stoutly contested by the respondents. In the reply, it is averred that the posts of Section Officers and Assistants were decentralised into 33 cadres comprising one or more Ministry/Department. Depending upon the existence of the vacancies in each cadre, the DOP&T compiles and intimates the Staff Selection Commission (SSC) as to the number of vacancies to be filled up against 50% quota through direct recruitment. The remaining 50% vacancies are filled up by promotion from UD grade on the basis of seniority-cum-fitness. The method of filling up the post by promotion from UD grade is explained in the counter, as under:

"the DOPT specify the 'zone' of promotion for the relevant Select List year. The cadre authorities then promote the eligible officials borne on their cadres, who are covered in the 'zone' against available vacancies in the cadre after these are recommended by the DPC. The excess number of vacancies and excess number of eligible persons are reported to DOPT by the cadre authorities. On receipt of information from all the cadre authorities, the DOPT prepare a central panel for unadjusted UDCs and nominate them to the cadre where excess number of vacancies are available.

It is submitted that similar pattern of recruitment is made for promotion quota for Section Officers.

Thus recruitment to the decentralised grade of Assistants is made by the concerned cadre controlling authorities cadre-wise. The DOPT only coordinates the process of recruitment.

3. Since the process for making regular appointment/recruitment on regular basis as detailed above takes considerable time (1-2 years), the cadre controlling authorities can make ad-hoc arrangement by promoting UDCs (Upper Division Clerks) on an ad-hoc basis subject to their eligibility/fitness, for a specified period or till the vacancies are filled up on a regular basis whichever is earlier. Since both the Central Secretariat Clerical Service (CSCS) which covers the posts of UDCs and CSS which covers the posts of Assistants and Section Officers are decentralised, recruitment/appointment/promotion are made cadre-wise and not on an all-Secretariat basis. The UDCs are thus promoted to the posts of Assistants on the basis of cadre-wise seniority by the concerned cadre control authority. Thus the ad-hoc promotions depend on local conditions in different cadres and when the vacancies in Assistants of CSS in a particular cadre get filled up on a regular basis in accordance with the provisions of the statutory rules, it is but logical that the UDCs promoted on an ad-hoc basis to the posts of Assistants, will have to make way for the regular Assistants. They cannot claim continuation in the higher grade as a matter of right by referring to the cases of Assistants in other cadres/in other Ministries. When ad-hoc promotions are made cadre-wise, reversions, if necessary are also to be effected cadre-wise only.

4. The ad-hoc appointments are resorted to as a stop-gap arrangement which is purely fortuitous and cannot give rise to any claim to seniority/regular appointment in that grade. Such appointments are terminated when regular officers become available to fill the vacancies. These terms and conditions are made explicit in "order" for ad-hoc appointment. The reversion of ad-hoc appointees become inevitable on the joining of regular officers so that the number of such officers does not exceed the sanctioned strength of the posts at any point of time. Since regular officers are becoming available and there is no vacancy to adjust them, the ad-hoc appointees are to be reverted to make way for the regular officers.

The contention of the applicant that the Assistants Grade of CSS is centralised, is not correct. As stated above, it is decentralised into 33 cadres. In fact, the concerned administrative Ministry resort to adhoc appointment till regular appointments are made through above mentioned two modes of recruitment. It is submitted that as on 14.12.1998 the sanctioned strength of Assistants in the Ministry of F.W. is 216, out of these 157 are regular

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Assistants and 59 have been promoted on ad-hoc basis, with the specific condition that they will have to revert as soon as regular candidates become available. The applicant Shri G.L. Madan is the junior-most among these 59 ad-hoc promotees as a stop-gap arrangement. At present 10 persons who are regular Assistants have become available in the Ministry, either by Direct Recruitment or by reversion from Section Officer post or by return from long leave, etc. The result is that there is an excess of 10 Assistants in the Ministry over and above the sanctioned strength. Therefore, in view of the fact that no person junior to the applicant is officiating as Assistant on ad-hoc basis in the cadre of Ministry of Health & F.W. his adhoc appointment is liable to termination consequent upon joining of a regular candidate.

Since adhoc appointment is liable to be terminated at any time and without any notice, and since regular officers who have a legal right are joining and have joined and since the actual strength of officers should not exceed the sanctioned strength, it is respectfully prayed that the Hon'ble Tribunal be pleased to vacate the interim order for maintaining the status-quo in respect of the applicant, as the application is liable to be dismissed with costs."

6. The learned counsel for the respondents Sh. P.H. Ramchandani, contends that the ad hoc promotion is ~~stop gap~~ only ~~a~~ ~~purely~~ arrangement for a specified period or till the vacancy is filled up on regular basis, whichever was earlier. As the post of UDCs and the Assistants are decentralised the recruitment or promotion could be only on cadrewise and cannot be on all Secretariat basis. They are promoted to the post of Assistant in the Ministries as per the range of select list depending upon the requirements in the said cadre, i.e., in the Ministry concerned, by the cadre controlling authority, until vacancies were filled up by the DOP&T on regular basis. It is, therefore, contended that the existence of a junior in another Ministry cannot be a valid ground for the applicants to urge, as they are either promoted or reverted on the basis of the vacancy arising in the Ministry in which they were working. It is, therefore,

contended that in the absence of any grievance as regards the continuance of any junior to them in their Ministry, the applicants are liable to be reverted. (32)

7. We have heard the learned counsel and given careful consideration to the ~~contentions~~ ^{rival} advanced. The short question that needs to be considered in this case is whether the applicants are liable to be reverted from the post of Assistants (Ad hoc). The applicants belongs to the cadre of Ministry of Health and Family Welfare and they were promoted on ad hoc basis, as Assistants and they are now sought to be reverted as UDC. The applicants proceed on the premise that they are covered by Rule 13 (7), which deals with temporary promotions and reads as under:

"(7) Temporary vacancies in the Assistants' Grade in any cadre shall be filled by the temporary promotion on the basis of seniority, subject to the rejection of the unfit, of officers of the Upper Division Grade of the corresponding cadre of the Central Secretariat Clerical Service who have rendered not less than five years approved service in that Grade and are within the range of seniority.

Provided that, if any person appointed to the Upper Division Clerks' Grade is considered for promotion to the Assistants' Grade in any cadre under this sub-rule all persons senior to him in the Upper Division Grade in, that cadre shall also be so considered notwithstanding that they may not have rendered five years' approved service in that Grade.

Provided further that if officers within the range of seniority are not available in a cadre for promotion, the appointments shall be made from a panel, furnished by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs, of officers serving in the other cadres:

Provided further that while considering the cases of officers belonging to the Scheduled Castes and Scheduled Tribes, reservations shall be made in accordance with such instructions ad may be issued by the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs from time to time."

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8. The rule speaks of filling up of temporary vacancies in the grade of Assistants in any cadre by way of promotion. The promotion is on the basis of seniority subject to rejection of the unfit from the UD grade. The eligibility for temporary promotion is five years of approved service in that grade. Another condition that is stipulated under Rule 7 is that he should be within the range of seniority. The second proviso to sub rule (7) is crucial in this case. It deals with the situation for temporary promotions where officers within the range of seniority are not available in a cadre, then the promotion could be made from the officers serving in other cadre. The expressions, employed in this sub-rule are cadre, grade and range of seniority which are defined in rule 2, which have to be noticed to understand the scope of promotion in a temporary vacancy:

"cadre" means the group of posts in the Grades of Section Officer and Assistant in any of the Ministries or Offices specified in column (2) of the First Schedule and in all the Offices specified against such Ministry or Office in column (3) of that Schedule;

"Grade" means any of the Grades specified in rule 3; "range of seniority" in relation to any grade means the range specified by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs in the common seniority list for that grade for additions to Select List or for temporary promotions, as the case may be;"

9. The expression 'cadre' is used with reference to the posts in the grades of Section Officer and Assistant, to the particular Ministry or offices in that Ministry specified in column 2 and 3 of the First Schedule, respectively. In the first Schedule of the Rules 32 Ministries of the Central Government were mentioned in the second column. Hence as per the above definition, each

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Ministry is a cadre and the posts of Section Officers and Assistants in each Ministry constitute a distinct cadre in the CSS. 'The cadre authority' is defined as the Ministry or office specified in respect of that cadre. 'Grade' means any of the grades as shown under Rule 3, which defines composition of service, constituting Group 'A' or Group 'B' of Central Civil Service. Group 'B' comprises of Assistant Grade, 'Range of seniority' is defined as the range specified by the Central Government on any grade in the common seniority list for purposes of addition to select list or for temporary promotions. Thus, for the purpose of filling up a temporary vacancy under Rule 13 (7) in any grade the preparation of the common seniority list for UD grade appears to be condition precedent because all UD grade employees who have completed five years and are within the range of seniority, in the common seniority list are entitled to be promoted in any temporary vacancy. As per the second proviso to Rule 13 (7) when there are no vacancies available in the particular cadre i.e. in a particular Ministry, but if the vacancies are available in other cadres, i.e., other Ministries UDCs within the range of seniority in the common seniority list should be accommodated in the other cadres. It, therefore, follows that merely on the ground that there are no vacancies in the particular cadre in which a UDC was working, he was not liable to be reverted, he should be accommodated in other Ministries/cadres, if he falls in the range of seniority.

10. We have deliberated over the contentions raised by the learned counsel for the respondents. The first contention of the learned counsel is that as the applicants were not appointed on ad hoc basis and not in a

temporary vacancy under Rule 13 (7) and hence the reliance placed on Rule 13 (7) is wholly misplaced. We are not convinced. Rule 13 (A), no doubt contemplates the recruitment to the Assistant grade on ad hoc basis. It provides for ad hoc promotion on certain contingencies which are mentioned in several clauses of sub rule (1) and sub rule (2). This definition only provides that the ad hoc appointment should not exceed more than two months and that the ad hoc appointment is made only against leave or local vacancy of a specified duration of two months. On the other hand, sub rule (7) of Rule 13 speaks of a temporary vacancy which may arise for any reason and it does not bar a temporary promotion for more than two months. Even in the OM dated 26.11.69 which is strongly relied upon by the learned counsel for the respondents, the expression "temporary promotion" was used and how the temporary promotion should be made was also considered and decided by the Government. We are, therefore, of the view that the applicants promotions fall only under Rule 13 (7) and not Rule 13 (A). It is further argued by the learned counsel that as the posts of Assistant and Section Officer having been de-centralised as long back as in 1962 confining the cadre to the particular Ministry in which the officer was working, his promotion or reversion should be with reference to the said cadre only. The existence of vacancies in certain other Ministries in the posts of Assistant will not give any right to them to be posted in those Ministries, i.e., outside their cadre. The learned counsel relies on OM dated 26.11.69 (Annexure R-1). But a close reading of this OM does not appear to support the argument of the learned counsel. In para 2 of the OM it clearly says as under:

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"If persons within the range are not available in a particular cadre then the additions to the Select Lists or temporary promotions should be made from a panel of names furnished by the Home Ministry."

11. In the OM it appears that the Government has taken a decision to give a go-bye to the existing rules and regulations when it says:

"The principles and procedures of promotion laid down for various Central Secretariat Services in the existing Rules/Regulations would continue to be followed, except that officers in a cadre who are outside the range of seniority prescribed for a particular grade on all-Secretariat basis would not be considered for promotion."

12. It is clear from the above that the Government, recognising the necessity of preparation of the common seniority list for a grade on all-Secretariat basis, directed not to make any promotion or reversion as per the rules. This action, in our view, is contrary to the rules and hence illegal. Learned counsel for the respondents also submits that the CSS Board was set up by the Ministry of Home Affairs to prepare a seniority list showing the range of seniority for the purpose of promotion in each grade. He invites our attention to one such list. But, we find that it is not in accordance with the rules. The said list has no sanction of law. The decision taken by the Government in violation of rules cannot be sustained.

13. It is not known why the rules are not being followed in preparing the common seniority list of each grade for the purpose of promotion/temporary promotion in accordance with rule 13 (7) of the CSS Rules. As stated supra, grade was defined as the grade specified in Rule 3 which deals with the composition of the service. Assistant Grade comprising of Group 'B' ministerial, is one of the

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grades in the Central Secretariate Service. The grade cannot be restricted to each cadre for the purpose of Rule 13(7). The cadre may have been decentralised but not a grade. Sub rule (7) of Rule 13 speaks of preparation of common seniority list for Assistant Grade in all Secretariat Service and to make temporary promotions and in case of non-availability of officers/vacancies within the range of seniority in a particular cadre then they should be accommodated in another cadre.

14. Though, the applicants are juniormost in their cadre but it is not the case of the respondents that they are juniormost officers in the particular grade and that the allegations that there are several juniors working in the other Ministries in the grade is not disputed.

15. In the circumstances, the OAs should succeed. The respondents shall prepare a common seniority list in relation to UD grade serving in all the cadres specified in the first Schedule in terms of Rule 2 (hh) of the CSS Rules, 1962 and shall not revert the applicants, if there are any juniors to the applicants in the other cadre/Ministries continuing in the grade of Assistants, on ad hoc basis or until the regularly selected Assistants are promoted in their places. The common seniority list shall be prepared within a period of six months from the date of receipt of a copy of this order.

16. In the result the OAs are allowed with costs of Rs.5,000/- (Rupees five thousand only).

(Govindan S. Tampi)
Member (Admnv)

'San.'

(V. Rajagopala Reddy)
Vice-Chairman (J)

Govindan S. Tampi