

Central Administrative Tribunal  
Principal Bench

O.A. No. 491 of 1998

New Delhi, dated this the 2<sup>nd</sup> July, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Janardhan Rao,  
Dy. Director,  
Employees State Insurance Corporation,  
Regional Office, Rajinder Place  
New Delhi-110008. .. Applicant  
(In person)

Versus

1. Employees State Insurance Corporation through its Director General, Panchdeep Bhawan Kotla Road, New Delhi-110002.
2. Shri Mohd. Mohideen
3. Shri B. Manohar
4. Shri S.P. Singh
5. Shri A.K. Srivastava
6. Deleted
7. Shri Arun Kumar
8. Shri Mewa Singh
9. Shri V.K. Khurana
10. Shri R. Kesavan
11. Deleted
12. D. Bhattacharjee
13. Shri K. Raja Sekhar
14. Deleted
15. Shri B.C.M. Rao
16. Shri Hari Shankar
17. PNR Chaudhary
18. A.S. Meeran
19. A.K. Sinha
20. O.P. Jatia
21. A. Jayavelu

(By Advocate: Shri G.R. Nayyar  
Mrs. Meera Chhibber)

(16)

ORDERS.R. ADIGE, VC (A)

Applicant impugns respondents' Memo dated 31.7.97 (Annexure A-2) and seeks recasting of the seniority list dated 21.7.95 (Annexure A-3) such that he is placed at S1. No. 98 therein. Applicant who is at S1. N. 116 of that seniority list in his representation dated 17.8.95 to respondents has, however, made a different prayer in as much as he wants to be placed above S1. No. 69 in that seniority list dated 21.7.95. Thus it is clear that the prayer in the O.A. is at variance with the contents of applicant's representation.

2. The main ground taken in the O.A. is that applicant is entitled to get seniority on the basis of his ad hoc promotion as Dy. Regional Director w.e.f. 20.4.89 in terms of the Hon'ble Supreme Court's ruling in the Direct Recruits' case 1990 (s) SCC 715 and certain other judgments.

3. The order dated 13.4.89 (Annexure R-1) promoting applicant and others as Dy. Regional Directors on ad hoc basis w.e.f. 20.4.89 makes it clear that it was a purely stop gap arrangement, which could be terminated at any time without assigning any reason, and without notice, and which would not entitle them to any claim for seniority or eligibility for promotion. This ground is,

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therefore, squarely hit by the corollary top Principle A of the Director Recruits' case (supra), and is for that reason rejected.

4. During hearing, applicant who is a promotee, and who argued his case in person also contended that as he had been regularly promoted as <sup>on 23.4.90</sup> Dy. Regional Director while one Shri B. Manohar (Sl. No. 69) and several other direct recruits in the grade, had been appointed only after 23.4.90 (for instance Shri Manohar was appointed on 26.3.92), applicant should be reckoned senior to Shri B. Manohar and others. He contended that the seniority list should be prepared strictly on the basis of the date of appointment in the grade.

5. Official respondents have pointed out in their reply, and this has not been denied by applicant in rejoinder, that the direct recruits above whom applicant claims seniority, were appointed in response to requisitions sent to UPSC on 21.11.87 and 7.7.89. Because of the normal time taken in making direct recruitment, as well as certain stay orders issued by the Court, the vacancies could be filled up only in 1991-92. In the case of applicant, however, he belongs to a subsequent batch in as much as 110 vacancies became available towards end 1989, 55 in direct recruitment quota and 55 in promotion quota and in respect of these promotion quota vacancies, a proposal was sent to UPSC on 24.10.89 and the UPSC

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after holding DPC made its recommendations on 23.4.90 on the basis of which applicant and others were promoted as Dy. Regional Director.

6. Official respondents in Para 4.5 of their reply to the O.A. further aver that applicant cannot claim seniority above Respondent No. 2 to 21 because

- a) the vacancies of which they were directly recruited pertain to a period prior to period of the vacancies to which applicant promoted.
- b) Requisition to UPSC in respect of R-2 to 21 were sent earlier to the date on which applicant's vacancy was notified.
- c) the advertisement of vacancies in respect of R-2 to 21 had appeared earlier.
- d) select list of R-2 to 21 had also been drawn up earlier, but because of Court stay orders their actual appointments were delayed.

8. They also state that the seniority of direct recruits vis-a-vis promotees such as applicant have been correctly drawn up in accordance with DOPT's O.M. dated 7.2.1986 (Annexure R-11).

9. Applicant in the corresponding para of his rejoinder admits that DOPT's O.M. dated 7.2.86 is applicable for drawing up the seniority list, but contends that because direct recruits, did not become available in the years for which the requisition was sent, but joined only subsequently, by which time he himself had joined as Dy. Regional Director, they must rank junior to him. He also contends that the

Supreme Court's ruling in J.C. Patnaik & Others Vs. State of Orissa & Others and connected case JT 1998 (3) SC 105 (copy at Annexure RJ-2) mandates that direct recruits can be given seniority only w.e.f. the date of their joining the office and not from an earlier date, and hence the impugned seniority 1s it has been wrongly drawn up without assigning applicant his lawful seniority.

10. We have considered the ruling in J.C. Patnaik's case (supra) carefully. In that case, 40 vacancies of A.E. became available in the Irrigation Dept., Govt. of Orissa in 1978, out of which 10 posts were to be filled by direct recruitment, and the rest through promotion. Advertisement for direct recruitment was issued in 1979 and after selection, letters of appointment finally issued in March, 1980. Meanwhile against the promotion quota, promotions were made in 1979-80. Shri Jagdish Chandra Patnaik who was a direct recruit filed O.A. No. 78/89 in the State Administrative Tribunal claiming that he should be given seniority below the promotee A.Es of the year 1978 since he had been recruited to the said post against a vacancy which had arisen in 1978 and for the delay cause by the Dept., he should not suffer. The relevant rules regulating their appointments were the Orissa Service of Engineers Rules, 1941, Rule 26 (1) of which provided that

"When officers are recruited by promotion and by direct recruitment, during the same years the promoted officers shall be considered senior to the direct recruit officers, irrespective of the dates of their appointment."

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11. Applying this sub-rule to the facts and circumstances of the case, the Supreme Court dismissed the appeal holding that under Rule 26(1) the expression "recruited" would mean "appointed", and the expression "during the same year" would mean "during the calendar year", and, therefore, direct recruits recruited during the calendar year, would be junior to promotee recruits recruited during the said calendar year. It also held that when the language under the statute was unambiguous and the end result was neither arbitrary, irrational or contrary to the object of the statute, then it was the duty of the Court to give effect to the words used in the statute as the words declared the intention of the law making authority.

12. It is clear that aforesaid ruling was delivered in the specific context of Rule 26 (1) Orissa Service of Engineers Rules, 1941, but there is no such corresponding rule governing appointments/promotions of Dy. Regional Director in the present case. Indeed applicant himself concedes that in the present case it is DOPT's O.M. dated 7.2.86 which would be operative. That O.M. is clear on the point that the relative seniority of direct recruits and promotees would be determined according to the rotation of vacancies between the two streams, based on the quota available for each stream based on

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the quota available for each stream, as per the Recruitment Rules in a particular year, and not by the date of joining the post of Dy. Regional Director. It is true that the O.M. has deprecated the practice of keeping direct recruit slots vacant for being filled up by direct recruits of later years, but the rotation of vacancies between direct recruits and promotees as per respective quotas has been reiterated in that O.M. dated 7.2.86, and such a rotation would be in respect of vacancies occurring in a particular year. In the present case there is no denial by applicant to the specific averment of respondents in their reply, that the direct recruit vacancies in respect of which applicant claims seniority, pertain to a period prior to the period of the vacancies to which applicant himself was promoted; the requisition to UPSC in respect of R-2 to 21 were sent prior to the date on which applicant's vacancy was notified; the advertisement in respect of R-2 to 21 appeared earlier, and indeed the select list of R-2 to 21 were also drawn up earlier but could not be operated upon because of Court's stay order. As applicant was a promotee of a subsequent batch, in terms of DOPT's O.M. dated 7.2.86, he cannot claim seniority over direct recruits of an earlier batch, notwithstanding the fact that for reasons wholly beyond their control, they actually joined duty subsequent to applicant.

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13. In the result we hold that J.C. Patnaik's case (supra) which is distinguishable on facts from the present case, does not assist applicant and the O.A. warrants no interference. It is dismissed. No costs.

A. Vedavalli  
(Dr. A. Vedavalli)  
Member (J)

S.R. Adige  
(S.R. Adige)  
Vice Chairman (A)

Karthik