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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. NO. 44 of 1995 Decided on : 17.11.1995

Bhikari Lal

... Applicant(s)

(By Shri V.P. Sharma Advocate)

versus

Union of India

... Respondent(s)

(By Shri VSR Krishna Advocate)

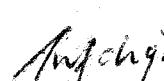
CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

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

1. To be referred to the Reporter or not ?
2. Whether to be circulated to other Benches of the Tribunal ?


(DR. A. VEDAVALI)
Member (J)


(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A. No. 44 of 1995.

New Delhi: November 17, 1995.

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

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

Bhikari Lal s/o Sh. Ram Singh
R/O C-51, Jyotinagar (W), Shahdara,
Delhi.

2. Jagdish Rai Khanna,
s/o Sh. R. R. Khanna,
R/o 1692, Laxmi Bai Nagar,
New Delhi.

3. C. P. Rohtagi,
s/o Sh. R. N. Rohtagi,
R/o 27/47 Pathwari Agra-28004.

4. S. S. O. Rai,
s/o Sh. S. R. Roy,
R/o O-50/154, Kajipura Kala,
Varanasi.

5. Kailash Ram,
s/o Sh. Ram Sagar Ram,
R/o S-9/11-3, Hukoolganj,
Varanasi.

6. Bali Raj s/o Sh. Late Murali,
R/o C-29/2 Raghunar, Maldhya,
Varanasi.

7. Smt. Anju Katyal, wife of K. L. Katyal,
R/o 30/10 Pant Nagar Jangpura,
New Delhi.

8. Chander Bhan s/o Sh. Guli Ram,
R/o 3719 Roshan Area Road,
Delhi-7.

9. J. P. Dhawan,
s/o Sh. Sunder Lal,
R/o WZ-B-105 Arya Samaj Road,
Uttam Nagar,
New Delhi

.....Applicants.

By Advocate Shri V. P. Sharma.

Versus

1. Union of India through the Secretary,
Ministry of Water Resources,
Govt. of India,
Sharm Shakti Bhavan, New Delhi

2. The Chairman,
Central Water Commission,
Seva Bhawan,
New Delhi Respondents.
By Advocate Shri V.S.R.Krishna.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A).

In this application, Shri Bhikari Lal and eight others, all working as Senior Computers in the CWC have prayed for revising their seniority in the Senior Computers cadre from the date(s) of their continuous officiation as has been allowed in the O.A. No.2016/90 Raj Singh & others vs. UOI, along with consequential relief by way of placement of their names at the appropriate position in the seniority list dated 1.6.94.

2. Admittedly, the applicants were appointed as Senior Computers on adhoc basis on different dates between 22.10.77 and 29.6.82 and were confirmed as such after putting in adhoc service on continuous basis for periods ranging from approximate 4½ to 8 years. Their contention is that the benefit of continuous officiation has been granted in a number of cases including O.A.No.23/88 (CAT Allahabad), O.A.No.1741/92 (CAT P.B.), O.A.No.2016/90 (CAT P.B.) and O.A. No.1783/88 (CAT P.B.) and the same relief cannot be denied to the present applicant. Reference has also been invited to the contents of respondents' letter dated 16.11.89 (Annexure-A7) in which it has been opined that seniority has to be based on the length of continuous ~~regular~~ ^{service} emphasis is supplied).

in the grade and the impugned seniority list of 1.6.94 was revised in the background of the Tribunal's decision in O.A.No.2016/90 Raj Singh & others vs. UOI & others but the same benefits have not been extended to the present applicants which is illegal and discriminatory. Attention has also been invited to Hon'ble Supreme Court's ruling in the case Inder Pal Yadav Vs. UOI -1985(2)SCC 48 that those who do not come to the court need not be at a comparative disadvantage to those who rush there, and if they are otherwise similarly situated they are entitled to similar treatment. The decision in Byomkesh Ghosh Vs. UOI-364 Swamy's C.L.Digest, 1993 has also been cited on this point.

3. The respondents in their reply have challenged the O.A. and state that the impugned seniority list of 1.6.94 was rightly revised in the light of the Tribunal's decision in Raj Singh's case (*Supra*) by granting the benefit of continuous officiation to the applicants in that O.A., but that judgment was a judgment *in personam* and not a judgment *in rem* and therefore its benefits cannot be extended to the present applicants.

4. The applicants in their rejoinder have challenged the stand taken by the respondents and have reiterated their contention that they are entitled to similarity of treatment even if they were not a party to O.A. No.2016/90. Attention in this connection has been invited to the Full Bench decision dated 29.12.92 in E.S.Elias Ahmed & others

VS. UOI; H.K.Anand & others Vs. Delhi Administration; Swamy's Case Lal Digest, 1993 Vol-VI page 590; and Shiv Charan Vs. UOI & others decided by the Hon'ble Supreme Court on 27.5.95 in a civil appeal arising out of SLP(C)No.11126/95.

5. We have heard Shri V.P.Sharma for the applicant and Shri V.S.R.Krishna for the respondents. We have also perused the materials on record. During arguments, Shri V.P.Sharma has reiterated the grounds taken in this O.A., cited the relevant case laws referred to above, and has also cited one or two other rulings including A.K. Khanna Vs. UOI -1989(1)ATJ 71 and O.P.Sharma Vs. UOI-1992(2) ATJ545. Respondents' counsel Shri Krishna has however argued that the ^{relied upon by Shri VP Sharma} cases are dissimilar to the present one, in as much as in those cases the seniority list of 1.6.94 was not impugned as has been done in the present case. Furthermore he has stated that the O.A. suffers from a serious infirmity in as much as no specific order has been impugned, and also that none of the parties likely to be affected if the prayer was allowed, have been impleaded. Shri Sharma has however responded by saying that these arguments are outside the pleadings.

6. We have considered the rival contentions carefully. We note that in O.A.No.2590/90 Shri A.K. Pal & one other Vs. UOI & others, two identically placed senior Computers had sought the benefit of continuous officiation on adhoc basis for purposes

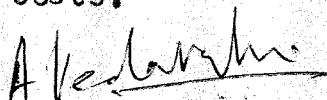
of seniority, That O.A. was dismissed by judgment dated 23.5.95 in which one of us (Hon'ble Shri S.R.Adige, Member (A).) was a party. That judgment noted that the question of counting adhoc service towards seniority had occasion to be examined exhaustively by the Tribunal in O.A. No.727/87 I.K.Sukhija & others Vs. UOI & others and connected cases, decided on 13/14.9.93. In that decision in Sukhija's case (Supra) the development of law relating to counting of adhoc service towards seniority had occasion to be discussed in the light of the recent judicial pronouncements of the Hon'ble Supreme Court on the subject in a catena of decisions including the Direct Recruits Class II's case -J.T. 1990 (2) SC 264; Keshav Chandra Joshi & others Vs. UOI & others- AIR 1991 SC 284; Narendra Chahla Vs. UOI-AIR 1986 SC 638; Ashok Mehta & others Vs. Regional Provident Fund Commissioner & others decided on 5.2.92 and State of West Bengal Vs. Aghore Nath Dey & others-J.T. 1993(2) SC 598. The conclusion that the Tribunal arrived at in Sukhija's case (Supra) after a detailed discussion of the above rulings was that where the ad hoc service was followed by regularisation, such adhoc service could be counted towards seniority only if (i) it was made strictly in accordance with and after following all the rules or (ii) where the ad hoc appointment/promotion was made dehors the rules, the period of such ad hoc service was 15-20 years. Nothing has been shown to us to allow us to

conclude that the decision in Sukhija's case (supra) has not become final.

7. As in A.K.Pal's case (supra) so in the present one, the applicants admittedly were appointed as Senior Computers on a purely adhoc temporary basis as a stop-gap-arrangement, and they have not established that they were appointed in accordance with and after following all the rules. Similarly as in that case, so in the present one, none of the applicants have put in adhoc service of 15-20 years duration and hence neither of the two conditions referred to above are satisfied. We note that none of the judgments relied upon by Shri Sharma appear to have noticed Sukhija's case (Supra) ^{and} as that (Sukhija) judgment is based upon a detailed and exhaustive analysis of several recent decisions of the Hon'ble Supreme Court on the very question of counting of ad hoc service towards seniority, which is the subject matter of the present O.A., we as a co-ordinate bench are bound to follow that judgment, which as stated above, has also very recently been followed in A.K.Pal's case (supra) in which one of us was a party.

8. As the decision in A.K.Pal's case (Supra) is fully applicable to the facts of this case, for the reasons contained therein, and summarised above, we see no good reasons to interfere in this matter. The O.A. fails and is dismissed.

No costs.



(DR. A. NEDAVALLI)
MEMBER (J)

/ug/


(G.R. ADIGE)
MEMBER (A)