

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 874 /1995

Date of Decision: 28 - 10-1998

Shri R. K. Vadhera & Anr. ..

APPLICANT

(By Advocate Shri R. K. Handoo

versus

Union of India & Ors. ..

RESPONDENTS

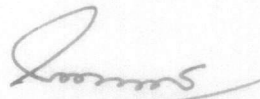
(By Advocate Shri Madhav Panickar

CORAM:

THE HON BLE SHRI Justice Ashok Agarwal, Chairman

THE HON BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)

Cases referred:

Narender Chadha & Ors. Vs. UOI AIR 1986 SC 638
N. S. K. Nayar & Ors. Vs. UOI & Ors. AIR 1992 SC 1574
M. B. Hiredoudar Vs. State of Karnataka AIR 1992 SC 410
Mukeshbhai Chotu Bhai Patel Vs. UOI & Ors. AIR 1995 SC 415
State of Rajasthan Vs. Ram Verma 1997 (11) SLJ 352
Vidya Ram & Ors. State Bank of Haryana & Ors. 1995 (4) SLR 319

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-874/95

New Delhi this the 28th day of October, 1999.

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.P. Biswas, Member(A)

1. Sh. R.K. Vadhera,
S/o Sh. P.L. Vadhera,
DEO (Grade-B), Computer
Centre, 10 East Block,
R.K. Puram, New Delhi-68.
2. Smt. Usha Kiron,
W/o Sh. V.K. Choudhary,
DEO (Grade-B), Computer Centre,
10 East Block, R.K. Puram,
New Delhi-66. Applicants

(through Sh. R.K. Handoo, Advocate)

versus

1. Union of India through
Secretary, Ministry of Planning
and Programme Implementation,
Department of Statistics,
4th Floor, Sardar Patel Bhawan,
Parliament Street,
New Delhi-1.
2. Executive Director,
Computer Centre,
10 East Block, R.K. Puram,
New Delhi-66. Respondents

(through Sh. Madhav Panikar, Advocate)

ORDER(ORAL)

Hon'ble Sh. S.P. Biswas, Member(A)

The legal issues that fall for
determination in this O.A. are as hereunder:-

(i) Whether the services rendered by the
applicants as Punch Card Supervisors (re-designated
as Data Entry Operator-Grade'B' (DEO-B for short)
over a decade and a half entitle them to claim that

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they are regular holders of the posts for the purpose of seniority in the circumstances when there were no Recruitment Rules and the applicants continued working uninterruptedly in those posts after being promoted on ad hoc basis?

(ii) What is the legality of claim of a senior for promotion to a higher grade post when a junior steals march over the senior in the circumstances where both of them were admittedly eligible for consideration against the promotional posts?

2. The factual background which has given rise to the issues as aforementioned, briefly stated, is as follows:-

Applicants No. 1 & 2 were initially recruited on 11.3.71 and 12.1.72 respectively as Key Punch Operators under the respondents in the grade of Rs. 950-1500. Subsequently, the applicants were promoted on ad hoc basis to the grade of 'Punch Card Supervisors' w.e.f. 19.3.83 and 7.4.84 respectively in the grade of Rs.1350-2200. On 2.7.90, the respondents took a decision to redesignate 'Punch Card Supervisors' as 'DEO-B' w.e.f. 11.9.89. After redesignation and pay revision, the applicants were not reverted and continued working in the same posts i.e. DEO-B till now. In the seniority list of Data Entry Operator Grade 'A', as circulated by the

respondents vide Annexure A-IV, the applicants stand at Serial Number 18 and 25 whereas Sh. V.K. Jain, an official junior to the applicant in the same grade, stands at Serial Number 24. The applicants, particularly, applicant No.1 is aggrieved by respondents inaction in not regularising his services as DEO-B from the dates they were promoted on ad hoc basis i.e. 19.3.83 for applicant No.1 and 7.4.84 for applicant No.2. Applicant No.1, in particular, alleges discrimination having been meted out to him on the ground that Shri Jain, junior to him, in the basic grade has been promoted as DEO-B on regular basis w.e.f. 11.9.89 ignoring his superior claim.

3. The learned counsel for the applicants seeks to assail the respondents inaction in not regularising his services as DEO-B from March 1983 on the basis of the orders of the Hon'ble Supreme Court in Narender Chadha & Ors. Vs. U.O.I. (AIR 1986 SC 638). It was held therein that ad hoc promotees holding posts for a long period without interruption are entitled to be regularised in the post with the benefit of seniority from the date of continuous officiation in the same posts. Learned counsel also drew our attention to the judicial pronouncement of the Apex Court in the case of N.S.K. Nayar & Ors. Vs. U.O.I. & Ors. (AIR 1992 SC 1574). Their Lordships in this case considered the question as to whether the services rendered by

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the applicants in the Senior Time Scale over a decade could entitle them to claim that they were regular holders of the post in that Senior Time Scale Grade 'A' service. The applicants claims in that case were allowed. He also cited the case law decided by the Apex Court in the case of M.B. Hiregoudar Vs. State of Karnataka (AIR 1992 SC 410). This was cited only to bring into sharp focus the applicants contention that the experience gained by an official over a long period could not be ignored just because he was not regularly appointed. The absence of Recruitment Rules at the time of appointment, as in the present case, does not make the appointment/promotion irregular or illegal when the candidate possessed requisite qualification and continued working efficiently. The Recruitment Rules framed subsequently could not be applied retrospectively to question the appointment made 16 years before. The learned counsel for the applicants would submit that the facts and circumstances in the aforesaid cases are squarely applicable in the case of the applicants herein.

4. The learned counsel for the respondents opposed the claims basically on two grounds. Firstly, there are 20 officials working as DEO-B on regular basis. The senior most among them was appointed to the grade on 16.6.87 and the last one was appointed on regular basis in December 1989. These officials are senior to the applicants herein.

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The request of the applicants to regularise their services in the grade of DEO-B w.e.f. the date of their ad hoc promotions to that grade i.e. 19.3.83 and 7.4.84 cannot be acceded to as the officials senior to them were promoted to the post of Punch Card Supervisor (redesignated as DEO-B) in 1989 on regular basis. Such request of the applicants will cause injustice to others senior to them.

5. Secondly, the application is hit by limitation. This is because the position of seniority has got settled in 1989 when Sh. V.K. Jain was promoted. As per the law laid down on the subject, settled issue in terms of seniority cannot be allowed to get unsettled by belated representations. The applicants have woken up six years after in 1995 with the claim to get their services regularised with retrospective effect from 1983/84. Such a claim is not permissible, the learned counsel for the respondents would contend.

6. The respondents would also submit that Sh. Jain was promoted superseding the claim of applicant No.1 because of the Departmental Promotion Committee (DPC for short) having considered his case alongwith others favourably because of superior merit of Sh. Jain over applicant No.1.

7. We shall now indicate the position of law in respect of regularisation. Regularisation

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can be made pursuant to a Scheme or an order in that behalf against a regular vacant post. Merely working on a post for a number of years on ad hoc basis will not vest the person with the right to get regularised on a post which is meant to be filled up by regular Recruitment Rules. In holding this view, we get support of the Apex Court in the case of Mukesh Bhai Chhotu Bhai Patel Vs. U.O.I. & Ors. (AIR 1995 SC 415).

8. We shall now examine the two issues referred to in para-1 of our orders. The details as to how Shri Jain has been allowed benefits of regular promotion are not before us. Ordinarily, reasons for over looking the claims of a senior employee while promoting his juniors are to be recorded in the relevant files containing the proceedings and those reasons need not necessarily be conveyed to the aggrieved person. But those details are required to be placed before the Court/Tribunal exercising judicial review on administrative orders. In the instant case, the respondents are silent as to how an official admittedly junior has been allowed to steal a march over the senior. The Apex Court in the case of State of Rajasthan Vs. Sh. Ram Verma (1997(11) LLJ 352) has suggested that to avoid complaints of arbitrariness and also to lend credibility to selection process, it would be only appropriate to inform the aggrieved person the reasons for denial

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of promotion. We are unable to accept the respondents plea that it was only in the rejoinder that the applicant has raised the issue of being overlooked vis-a-vis his juniors and on that ground the reasons for rejecting applicant's relief could not be ascertained. We find that the rejoinder was filed in January 1996 and there was sufficient time to come out the reasons.


9. It is well settled in service jurisprudence that when a junior in the feeder cadre is promoted, those senior in the same feeder grade ought to have been promoted unless there are other valid reasons that could deny such considerations. If any authority is needed for this proposition, it is available in the case of Vidya Ram & Ors. Vs. State Bank of Haryana & Ors. (1995(4) SLR 319) decided by the Hon'ble Supreme Court. Admittedly, the applicant is senior to Sh. Jain and continuous to work as DEO Grade 'B' for so many years and there are no complaints as regards his inefficiency or integrity. The fact that there was a regular vacancy in higher grade in 1989 is also not denied. Under these circumstances, the respondents action in ignoring the claim of the senior is in violation of the law laid down by the Apex Court in Vidya Ram's case (supra). Having failed to consider consider applicant's legitimate claim respondents cannot take the plea of limitation.

10. We find that applicant No.2 was junior to Sh. Jain. We also find that none of the employees junior to applicant No.2 has been promoted. Therefore, the basis on which the applicant No.1 could be considered on merits is not applicable to applicant No.2. In fact the learned counsel for the applicants made a submission that he is only pleading the case of applicant No.1.

11. In the background of position of law and the facts and circumstances of the case as aforementioned, we allow the O.A. partly in favour of applicant No.1 with the following directions:-

- (a) The respondents are directed to promote applicant No.1 in the grade of Data Entry Operator Grade 'B' w.e.f. 1.10.89 on regular basis with all consequential benefits.
- (b) Our orders aforesaid shall be complied with by respondents within a period of three months from the date of receipt of a copy of this order.
- (c) There shall be no order as to costs.


(Ashok Agarwal)
Chairman


(S.P. Biswas)
Member(A)