

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1168/95

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T.A. No.

DATE OF DECISION 23.8.1999

R.N. Chhipa

....Petitioner

Shri K.B.S. Rajan

....Advocate for the
Petitioner(s)

VERSUS

Union of India & Ors.

....Respondent

None

....Advocate for the
Respondents.

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The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri N. Sahu, Member (A).

1. To be referred to the Reporter or not
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal, Principal Bench

Original Application No.1168 of 1995

New Delhi, this the 23rd day of August, 1999

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Hon'ble Mrs. Laskhmi Swaminathan, Member (Jud1)
Hon'ble Mr. N. Sahu, Member (Admnv)

R.N.Chhipa,
Research Officer (Drawing),
Map Division,
Office of the Registrar General, India,
2-A, Man Singh Road,
New Delhi-110011

....Applicant

(By Advocate: Shri K.B.S.Rajan)

versus

1. The Union of India through the
Registrar General of India,
2-A, Man Singh Road,
New Delhi-110011

2. The Joint Registrar General of India
2-A, Man Singh Road,
New Delhi-110011

3. The Deputy Registrar General (Map)
2-A, Man Singh Road,
New Delhi-110011

....Respondents

(By Advocate: None)

OR D E R (ORAL)

By Hon'ble Mrs. Lakshmi Swaminathan, Member (Jud1)

The applicant is aggrieved by the letter of the respondents dated 10.5.95 rejecting his representation dated 25.1.95.

2. The brief facts of the case which are relevant to be noted for better appreciation of the issues involved in this case are as follows :- The applicant was initially appointed as Geographer and thereafter promoted as Senior Geographer. He was promoted as Research Officer (Map) in the scale of 2200-4000 on regular basis on the recommendations of the DPC held in Union Public Service Commission (in

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short 'UPSC') with effect from 25.9.89 by the order of even date (Annexure A-6). The applicant states that his promotion to the post of Research Officer(Map) was on selection basis in accordance with the Office of the Registrar General, India and ex-officio Census Commissioner for India (Group A and Group B posts) Recruitment (Amendment) Rules, 1989. He has further stated that he superseded four of his seniors when he was elevated to the post of Research Officer(Map) in 1989, which fact has not been denied by the respondents in their reply. At that time, admittedly, there were 11 posts of Research Officer (Map) when the applicant was elevated to the said post. In the seniority list as circulated by office memorandum dated 18.5.92 showing the position as on 1.5.92, the applicant is shown at serial number 12, and against column number 5, it is seen that he is shown as regularly appointed to the post of Research Officer(Map) on 25.9.89. He was reverted to the post of Senior Geographer with effect from 31.12.93 by the respondents' order of even date. In this order, it is mentioned that on expiry of the sanction of 1991 Census posts on 31.12.93, the applicant who was the juniormost amongst the officials promoted to the post of Research Officer(Map) stands reverted to the post of Senior Geographer with effect from the same date. In this order, the respondents have stated that his earlier promotion was made against 1991 Census posts sanctioned only upto 31.12.93.

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3. Shri K.B.S.Rajan, learned counsel for the applicant has submitted that the applicant was entitled to continue against the higher post as one Shri R.P.Singh, who was at serial number 1 in the seniority list, had been further promoted to the post of Map Officer with effect from 7.12.93 which post he took charge of, with effect from 30.1.94. He further submits that, at the time of reversion order passed against the applicant, he was on leave from ^{prior to 31.12.93} ~~31.12.93~~ to 28.2.94 which leave has been duly sanctioned to him. Learned counsel has, therefore, contended that from the date when Shri R.P.Singh had vacated one of the eleven permanent posts of Research Officer(Map) with effect from 7.12.93, the applicant had already been selected by the UPSC superseding his four senior officers and the post was clearly vacant on that date, ^{so} He could not have been reverted at least from the date when Shri R.P.Singh took over the higher post of Map Officer on 30.1.94. The applicant has further contended that there was one Research Officer(Map) namely Shri M.Abbas who was on leave from 22.11.93 to 31.1.94 against which vacancy also, the applicant could have been considered without reverting him by the impugned order. Learned counsel for the applicant has further contended that the respondents have needlessly reverted the applicant to the lower post when they could have adjusted him, ^{as} ~~as~~ he has already been duly selected in accordance with the Rules, against the vacant post which existed as mentioned in the O.A.

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4. Respondents in their reply have taken a preliminary objection that the application is barred by limitation. We reject this plea because they themselves have replied to the detailed representation of the applicant submitted on 25.1.95 by the impugned memo dated 10.5.95. Thereafter the applicant filed this O.A. on 4.7.95. Therefore, the plea of limitation fails.

5. With regard to the second objection taken by the respondents regarding non-joinder of necessary parties, we find this plea is also unsustainable in view of the facts ^{by} ~~that~~ what the applicant is claiming in this O.A. ~~is~~ for being adjusted against a vacant post. This plea of the respondents also fails.

6. The respondents in their reply have also stated that there were eleven regular posts of Research Officer(Map) and six more temporary posts were created in connection with 1991 census in the years 1990 and 1991. Out of seventeen posts available, only sixteen posts were filled, leaving one post vacant for the deputationist to revert back to the post after expiry of the deputation. They have also categorically stated in their reply that Shri R.P.Singh was promoted as Map Officer on 7.12.93 but he joined the new post only on 30.1.94 and, therefore, he continued to hold the post till that date. According to the respondents, on 31.12.93, all the seventeen posts remained filled and hence they had to revert the applicant to the post of Senior Geographer. The respondents have also stated that five temporary

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posts were created in 1990 and one post was created in 1991 for the census operation. Out of these six posts, five posts were filled in 1991. This fact, however, does not appear to be relevant in view of the fact that the respondents themselves have appointed the applicant as Research Officer(Map) by order dated 25.9.89 in which no indication whatsoever has been given that he has been appointed against a post which was to be created later. In any case, this will not be valid as the respondents cannot state that they have made appointment in the higher post two years prior to its creation. It is also relevant to note that the respondents have filled up the temporary post in 1991 more than one year after the applicant was selected and appointed as Research Officer(Map) by order dated 25.9.89. The respondents have submitted that Shri R.P.Singh was promoted as Map Officer by order dated 7.12.93 but he did not join till 30.1.94. As such, on the crucial date, he was holding the post of Research Officer(Map) and hence there was no vacancy in which the applicant could have been accommodated. They have therefore tried to justify the impugned order.

7. We have carefully considered the pleadings and submissions made by the learned counsel for the applicant. We find force in the submissions of the learned counsel for the applicant that ~~since~~ the applicant was on leave on the relevant date i.e. 31.12.93 and when he came back from leave, admittedly, Shri R.P.Singh had already been promoted and assumed higher post of Map Officer with effect from 30.1.94

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and there would have been a post of Research Officer(Map) in which the applicant could have continued. In view of the fact admitted by the respondents themselves that Shri R.P.Singh who was at serial number 1 in the seniority list of Research Officer(Map) as on 1.5.92 had already stood promoted with effect from 31.1.94(FN), the applicant on resumption of his leave on 28.2.94, could have rejoined his duty on 1.3.94 as Research Officer(Map). In this connection, we note that the relevant portion of the promotion order dated 25.9.89 reads as follows:

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"On the recommendations of the Departmental Promotion Committee, the President is pleased to appoint Shri R.N.Chhipa, Senior Geographer to the post of Research Officer (Map) in the pay scale of Rs.2200-4000 in a temporary capacity with effect from the date he takes over charge of the said post until further orders. He is posted to the Map Division in the office of the Registrar General, India, New Delhi.

2. Shri Chippa will be on probation for a period of two years."

8. From the above order, it is seen that the applicant had been promoted in a temporary capacity to the post of Research Officer(Map) with effect from 25.9.89 and, admittedly, he had also superseded four other officers while being selected to the post of Research Officer(Map), which is in accordance with the relevant Rules. Therefore the contention of the respondents that since he was the juniormost, he had to be reverted from the post of Research Officer(Map), is not tenable as his promotion to the post of Research Officer(Map) has been made on the recommendations of the DPC in accordance with the Rules. Taking into consideration the aforesaid promotion order dated
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25.9.89, it is apparent that the applicant had been promoted to the post of Research Officer(Map) in the pay scale of Rs.2200-4000 against one of the eleven posts existing at that time and he had also taken over charge of that post.

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9. In the facts and circumstances of the case referred to above and taking into account the stand of the respondents and in particular that Shri R.P.Singh was himself promoted and assumed the new post as Map Officer on 31.1.94, the impugned order is quashed and set aside. The respondents are directed to treat the applicant as continuing in the higher post of Research Officer (Map) without any reversion and adjusted against that post. They shall also keep in view the fact that in the meantime they had also promoted the applicant as Research Officer (Drawing) which carries the same scale of pay with effect from 6.10.1994. The respondents shall take necessary action regarding the consequential benefits in accordance with law and rules within **eight** weeks from the date of receipt of a copy of this order.

10. In the result, the O.A. succeeds and is allowed. No order as to costs.

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(N. Sahu)
Member(Admnv)

Lakshmi Srinivasan

(Mrs.Lakshmi Swaminathan)
Member(Judl)

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