

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2225/97

New Delhi this the 7th day of April, 1999.

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

1. Smt. M.R. Tshering,
W/o Sh. P.D. Tshering,
R/o B-78, Nanakpura,
New Delhi.
 2. Sh. V.K. Tiwary,
S/o Sh. G.P. Tiwary,
R/o Q.No.4, Road No.2,
Gardani Bagh,
Patna(Bihar).
 3. Smt. Anju Nigam,
W/o Sh. V. Tewari,
Vigilance Officer,
O/o Chief PMG UP Circle,
Lucknow(UP).
 4. Smt. Sharda Sampath,
W/o Shri M. Sampath,
Postal Training Centre,
Mysore.
 5. Sh. M. Sampath,
S/o Sh. Murugan,
Postal Training Centre,
Mysore.
 6. Sh. P.D. Tshering,
S/o Sh. L. Tshering,
B-78, Nanak Pura,
New Delhi.
- Applicants

(through Shri Manu Mridul, advocate)

versus

1. Union of India,
represented by Secretary to
Govt. of India,
Deptt. of Post,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. Chairman,
U.P.S.C.,
Dholpur House,
Shahjahan Road,
New Delhi.

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3. Secretary to Govt. of India,
Deptt. of Post,
Ministry of Personnel Public
Grievances and Pensions.

.... Respondents

(through Sh. R.P. Aggarwal for official respondents
and Shri R.L. Dhawan for private respondents)

ORDER

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

Applicants, all the six being successful in 1987 batch of Civil Service Examination (CSE for short), were selected for appointment to Indian Postal Service (IPS for short) Group 'A' posts as per appointment letters issued to them between 13.12.88 and 17.1.89. All of them are challenging herein respondents orders in (i) A-III gradation list corrected upto 1.11.96; (ii) A-V & A-VI orders dated 30.11.92 & 14.3.97 respectively by which, as they allege, dates of their entries into services and dates of regularisation in STS grade have been shown wrongly as well as (iii) respondents decision in not considering them for promotion to Junior Administrative Grade (JAG for short) for the year 1997-98.

2. The legal issues involved herein could be better appreciated if relevant background facts, based on claims of applicants and counter-claims of respondents, are shown in a table as hereunder:-

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| Name of the applicants (Sh./Smt.) | Date/Year of applicants initial apptt. in service | What the applicants would claim as date of initial appointment | Date/year from which applicants started working purely on adhoc basis in STS grade | What the applicant would claim as regards STS grade | Date/year of regularisation in STS grade as indicated by respondents | Remarks |
|-----------------------------------|---|--|--|---|--|--|
| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
| 1. H.R.Tshering | 12.1.89 | All of them claim that | 1.20.7.92 | They claim regular STS grade | 1.12.1.93 | If the claims in Col.5 are accepted, all |
| 2. V.K. Tiwary | 12.1.89 | the date of | 2.11.7.92 | w.e.f. Aug., | 2.12.1.93 | of them will be |
| 3. Sharda Sampat | 12.1.89 | initial apptt. | 3. | 92. In other | 3.12.1.93 | eligible for |
| 4. P.D.Tshering | 01.2.89 | in Junior | 4.1.8.92 | words, the | 4.01.2.93 | consideration |
| 5. Anju Nigam | 15.5.89 | Time Scale be | 5. | ad-hoc | 5. | of promotion |
| 6. M. Sampat | 12.5.89 | ante dated to | 6. | services | 6. | to JAG in Aug., |
| | | 26.8.88. | | w.e.f. dates | | 1997-the cut |
| | | | | as in Col.4 | | off date for |
| | | | | be counted | | consideration |
| | | | | for regular | | being 1.10.97 |
| | | | | seniority | | |
| | | | | in STS. | | |

3. The issues that fall for determination, in terms of law, in this OA are those as indicated in columns 3, 5 and 7 of the aforementioned table. We shall now proceed to deal with them in seriatim.

4. Shri Manu Mridul, learned counsel for the applicants argued strenuously to claim dating back of applicants initial entries into services to 1988 on grounds of the following:-

If the applicants were not in a position to join IPS in 1988, *it* was not because of failure on their part. The respondents have delayed offers of appointment to them. Drawing strength from the judgement of Apex Court in Pilla Sitaram Patrudu & Ors. Vs. UOI & Ors. (JT 1996(4) SC 731), the ld. counsel

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for the applicants would argue that when an official was entitled to be appointed according to rules and the said appointment was delayed for no fault of his/her and came to be appointed later on (in 1981 in the case referred to above), he/she is entitled to ranking given in the original select list and appointment. 33

5. The applicants deserved benefits arising out of DoPT's orders in O.M. No. 13018/1/93-AIS(1) dated 7.1.93 and the respondents should have actually reckoned the date of their initial appointment in JTS w.e.f. 26.8.88. This is because prior to 7.1.93 probationers who had obtained permission to abstain from joining training for the purpose of appearing at the next examination were assigned seniority with the candidates with whom they underwent probationary training. However, after 7.1.93, a decision has been taken that a candidate who obtained permission to abstain from joining training to appear at the next CSE will retain his original seniority. This decision was made applicable to the probationers appointed to different services on the basis of CSE held in 1987 onwards. As per applicants, it is on the strength of instructions in O.M. dated 7.1.93 that S/Sh. H.C. Agarwal, Sanjay Sharan and V.P. Singh who passed out CSE in 1988 and did not join the foundation course training with their batchmates but even then their joining dates were reckoned from the date on which the training commenced for 1988 batch officers i.e. August 1988. The applicants would contend that this facility was not given to them. Thus, they have been forced to face hostile discrimination vis-a-vis others.

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6. The learned counsel for the applicants also submits that as per the order dated 7.1.93 their appointments in JTS should relate back to the date on which the probationary training commenced for their batch i.e. 1988 batch. Therefore, in all fairness they should be deemed to have been inducted into the service initially on and from 26.8.88 and consequently should have been given substantive appointment on the posts falling under STS grade on and from 26.8.92. Further, the applicants should also be deemed to have completed 5 years of service in STS grade around August 1997. Thus, under provisions to subrule 3 of Rule 20 of the 1987 IPS Rules, the applicants would clearly fall into the zone of consideration as having acquired necessary qualification/eligibility of continuing 5 years in STS grade for the purpose of being considered for promotion to the post of JAG in the DPC scheduled to be held on 24.9.97.

7. The contention raised by the respondents that service and cadre allotment in respect of the applicants could not be finalised is not correct since both the exercises could be completed even after the officers were allowed to join the foundation course. There are even examples of exemption from attending the foundation course as in the case of Mrs. Anju Nigam. As per the ld. counsel for the applicants it is a case of deemed relaxation of rules as envisaged in the cases of G.S. Lamba & Ors. Vs. UOI & Ors. (1985(2) SCC 604) and Narender Chadha & Ors. Vs. UOI & Ors. (ATR 1986 SC 49) decided by Hon'ble Supreme Court. In this connection, applicants would also rely on the decision of the Apex Court in the case of G. Ramakrishna Rao &

Ors. Vs. State of A.P. & Ors. (1997(1) SCC 540). 35

In this case, the authorities had relaxed the requirement of 5 years service to qualify promotion as "Supervisors".

8. Shri R.P. Aggarwal, learned counsel for the answering respondents opposed the claims of all the applicants. Similarly, Shri R.L. Dhawan, counsel for respondent No.4 drew our attention to several infirmities in this O.A. presented by applicants. We have gone through the pleadings and perused the records. The applicants reliance on O.M. dated 7.1.93 is evidently misleading. This is because the provisions to retain the original seniority are applicable only to those candidates who sought prior permission to abstain from joining training for the purpose of appearing at the next Civil Service Examination. This is not the case with the applicants. Applicants did not suffer as a result of staggering of offers of appointments. They were not senior enough in the merit list. The order dated 7.1.93 does not stipulate for taking the same date as the joining date for all the candidates of the same batch. That apart, we find that 4 of the applicants had earlier been allotted to IDES and IDAS etc. services and it was only after a few months later on that they were allotted the Indian Postal Service. By suppressing this information, applicants have not come to this Tribunal with clean hands. If the applicants had any intention to join the foundation course alongwith the batchmates they were at liberty to do so on the basis of offers of services, other than IPS, received by them earlier. Applicants do not deny the possibilities of

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final allotment of cadre in course of Foundation Training and yet they did not join. We did not get an answer to this. Mrs. Anju Nigam, one of the applicants, though initially allotted to IPS had requested that she may not be sent to training immediately. In the case of other applicants there is no such orders. It is well known in service jurisprudence that an employee cannot claim to belong to a service unless he/she was born in the cadre therein. Without physically joining the cadre on a date, the applicants cannot claim to have the benefit of deemed date of joining in the facts and circumstances of the present case. In holding such a view, we are fortified by the law enunciated by the Hon'ble Supreme Court in the case of K. Madhavan Vs. U.O.I. (1987(4) SCC 566).

9. We shall now examine applicants allegation as regards illegal discrimination meted out to them. We find that for 3 senior officers, namely, S/Shri H.C. Agarwal, Sanjay Saran & V.P. Singh, the date of promotion to STS grade had been advanced to 26.8.92. This was done because a junior to them namely V.R. Rajan who had joined the service in JTS on 26.8.88 got promoted to STS w.e.f. 26.8.92. Seniority of the 3 senior officers had to be advanced following this Tribunal's order dated 20.8.90 (in OA-206/89 & 61 others OAs) in the case of Alok Kumar Vs. UOI striking down the relevant instructions for the depression of seniority in the case of the probationers who had obtained permission to abstain from joining training to appear in the next CSE. Hon'ble Supreme Court upheld the aforesaid order of the CAT.

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The dates of promotion of the three officers aforementioned had to be advanced to August, 1992 also in view of the provision in the Indian Postal Service Recruitment Rules, 1987, viz., Rule 20(B) of the said rules which reads as follows:-

"If an officer appointed to any grade in the service is considered for promotion to any higher grade, all persons senior to him in the grade shall also be considered notwithstanding that they may not have rendered requisite number of years of service."

We also find that subsequent amendment dated 18.3.97 to the IPS Rules of 1987, there is a corresponding modification in Rule 20, sub-rule(8) touching upon the provisions of services when juniors have already been considered.

In the instant case, none of juniors to the applicants have stolen a march over them in terms of promotion or seniority. Discrimination comes only when there is a legal right. If an employee has no legal right, he/she cannot complain of discrimination. Applicants have not established any of their legal rights having been violated.

10. We now come to the next legal issue regarding the applicants claim for counting their ad hoc services for the purpose of determining their seniority in the STS grade. The applicants have claimed that the ad hoc services rendered by them prior to 12.1.93 should get counted against the seniority in STS cadre on the strength of the judgement of the Apex Court in the case of G.P. Doval & Ors. Vs. Chief Secretary, Govt. of U.P. & Ors. (1984(4) SCC 329).

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That was the case where the Apex Court held that approval given by the Union Public Service Commission to temporary appointments already made earlier will relate back to the dates of initial appointment for the purpose of reckoning seniority on the basis of general rule of continuous officiation in the absence of any particular rule framed in that respect. The applicants have also cited the decision of the Apex Court in Union of India & Ors. Vs. G.R.K. Sharma (SLJ 1999(1) SC 19). In that case their Lordships held that "the expression regular service of 8 years in the grade means regular 8 years of service in the organisation to which he has been appointed." The learned counsel has also cited fairly a large number of judgements and orders of the Apex Court/Tribunal to buttress his contention on this issue. We have gone through all of them and may not burden this orders with details therein since the facts prevalent in the case laws cited by the learned counsel are distinguishable from the facts and circumstances of the present case before us.

We find from the records that the applicants were promoted purely on ad hoc basis by the respective circle headquarters. They got only the charge allowance and not the regular pay in the STS grade for the period they had worked on adhoc basis. In any case, ad hoc promotions of the applicants as shown in column-4 of the table aforementioned, were not backed by any regular DPC proceedings. Under these circumstances the law laid down by the Apex Court in para 47(B) in the case of Direct Recruit Class-II Engineering Association Vs. State of Maharashtra &

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Ors. (1990 SCC (L&S) 339) shall hold good for determination of applicants seniority in the STS grade. As per the law laid down by the Apex Court in a long line of decisions, purely ad hoc promotions/appointments, without being supported by procedures of regular promotion, will not entitle the ad hoc appointees to claim the seniority/regularisation. So far as the applicants are concerned, the duration of periods falling between Columns 4 & 6 of the table in para 2 fall in this category.

11. This is yet another legal issue. We find that the applicants are aggrieved by the order dated 30.11.92. This is an innocuous order and does not indicate on the face of it that the applicants have any cause of action. However, Column 4 of the order show the dates of regularisation of individual applicants in STS grade. The applicants would urge that this is wrong since they have been working in the STS grade long before from the middle of July or August 1992. It is only on that basis the applicants have decided to challenge the A-4 order dated 30.11.92. This is hit by limitation. If the applicants are aggrieved because of the seniority in STS having been shown wrongly, they should have approached the Tribunal long before. It is now well settled that the law does not lend any helping hands to those who wake up from their slumbers very late. Delay defeats legal rights as well as remedy in law. In any authority is needed for this proposition, it is available in Bhoop Singh Vs. U.O.I. (AIR 1992 SC 1414). In the case of P.K. Ramchandran Vs. State of Kerala & Anr. (JT 1997 (8) SC 189), it

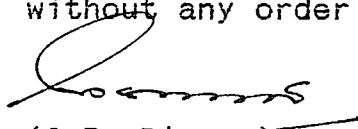
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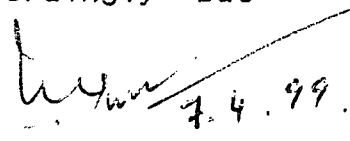
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has been held that the Court has to record in writing that the explanation offered for the delay in approaching the Court/Tribunal was reasonable and satisfactory. That is the pre-requisite to condonation of delays. No Courts have any power to extend the period of limitation on equitable grounds. The applicants herein have not even cared to file an application for condonation of delays. We do not find any ground, much less convincing ones, on the basis of which such matters touching upon the seniority of a large number of officers in a cadre could be allowed to be challenged after a gap of 5 years. This is not permissible in terms of law laid down by the Apex Court in the case of M.L. Cecil De Souza Vs. U.O.I. (AIR 1986 SC 2086). It was observed therein that:-

"It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties."

12. For the reasons aforementioned, the O.A. deserves to be dismissed and we do so accordingly but without any order as to costs.


(S.P. Biswas)
Member(A)


(T.N. Bhat)
Member(J)