

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

1 12 1999

O.A.No.2570 /1994

Date of Decision: ~~30-11-1998~~

Shri N.Ramesh Baby & Ors..

APPLICANT

(By Advocate Shri Jog Singh

versus

Union of India & Ors. ..

RESPONDENTS

(By Advocate Shri B.M. Arif

CORAM:

THE HON BLE SHRI

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:

Mukesh Bhai Chotabhai Patel & Ors. Vs. Jt. Agri. Marketing Advisor  
Govt. of India & Ors. AIR 1995 SC 413

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2570/1994

New Delhi, this 1st day of December, 1999

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)  
Hon'ble Shri S.P. Biswas, Member(A)

1. N. Ramesh Babu  
Sector 7/46, R.K.Puram  
New Delhi
  2. Narinder Chopra  
B-6, Plot No.2  
Dharma Apartments  
Patparganj, Delhi
  3. S.K. Chawla  
416, Bhai Parmanand Colony  
Kingsway Camp, Delhi
  4. Smt. Renu Mathur  
S-III/1636, Pushp Vihar  
New Delhi
- .. Applicants

(By Shri Jog Singh, Advocate)

versus

Union of India, through

1. Secretary  
Department of Telecommunications  
Ministry of Communications  
Sanchar Bhavan  
20, Ashoka Road, New Delhi
  2. Secretary  
Department of Personnel & Training  
New Delhi
- .. Respondents

(By Shri S.M. Arif, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Applicants, working under the Ministry of Communications, seek to challenge the orders dated 22.11.94 and 28.11.94 respectively by which they are sought to be reverted retrospectively to the post of Stenographers Grade 'D' from the posts of Stenographers Grade 'C' (ad hoc). It is the case of the applicants that because of excellent work and sustained efficiency that all of them were considered and promoted as Stenographers Grade 'C' on ad hoc basis in the year 1992

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and 1992. Before their promotions on ad hoc basis as Stenographers Grade 'C', all of them were considered by a duly constituted DPC in accordance with Recruitment Rules. Applicants submit that there are number of sanctioned/regular posts of Stenographers Grade 'C' available and that a number of officials far junior to them, are continuing in other Ministries in the same capacity. Overall sanctioned strength of service/cadre, particularly Stenographers Grade 'C' has gone up following the Scheme of 1.11.93 intended to effect promotional benefits for applicants as well as for those similarly placed. As a result of the implementation of the scheme dated 1.11.93, almost every member of the service (Stenographers Grade 'D' and 'C') in other Ministries stand benefited with the only exception of the applicants under the Respondent-Ministry.

2. Applicants would also submit that recruitment/appointment of Grade 'C' Stenographers is governed by the Central Secretariat Stenographers Service (CSSS for short), Rules, 1969. Rule 12 of the R/Rules which deals with the recruitment of Grade 'C' of the services also deals with substantive appointment to Grade 'C' stenographers. Rule 12(2) deals with temporary vacancies and also with filling up of remaining vacancies unfilled from amongst those included in the select list. This rule further provides that if vacancies still remain unfilled even after resorting to Rule 12(1), they have to be filled up on the basis of seniority subject to rejection of unfit from amongst officers of the Grade 'C' of the services who have rendered not less than 5 years in the grade and also come within the range of seniority. Similarly, Rule 13

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of the R/Rules deals with recruitment/appointment on ad hoc basis in certain cases and empowers the respondents to appoint officers on ad hoc basis in case officers/officials included in the select list are not available or cannot for any reason be appointed to such vacancies. It is a matter of record that no select lists have been prepared and issued by the Department of Personnel since 1992. As such, Respondent No.1 considered and appointed the applicants to the post of Stenographers Grade 'C' strictly as per the R/Rules, particularly Rule 12(2). In other words, it is the case of applicants that DoPT is required to maintain relative seniority list as per Rule 19 and it is on the basis of relative/central seniority list that promotions/transfers etc. of the members of the CSSS are to be effected. Therefore, for the purpose of reversion, respondents cannot resort to so-called cadre-wise seniority list maintained by each Ministry, applicants would further contend. In fact, it is misnomer to call individual stenographers working in a particular Ministry as a separate cadre. The expression "cadre" means overall strength of the service because the individual Ministries have not been sanctioned as a separate unit by the competent authority. Applicants would further argue that pursuant to the scheme of 1.11.93 the total sanctioned strength of the Stenographers has gone up and as such keeping in view the relative seniority of stenographers working in various Ministries, applicants should not have been reverted. In support of their contentions, applicants have provided with the details of those juniors, as pages 15-17 of the paper book, in Grade 'D' stenographers who have been allowed to work as Grade 'C'

on ad hoc basis in other Ministries ignoring their superior claims. These juniors qualified in the SSC examination much after the applicants as well as other Stenographers grade 'D' working in various other Ministries. As such, applicants who are seniors could not have been discriminated in the matter of continuation of ad hoc service vis-a-vis others who are admittedly juniors to them.

3. It is also the contention of the applicants that CSSS ought to have one common seniority and therefore if reversion has to be effected then the junior most in that list should be reverted first. Applicants also submit that they were recruited on the basis of examinations held earlier, while there are many others recruited on the basis of examinations held later and are still working in other Ministries as Stenographers Grade 'C' on ad hoc basis. Unless those junior persons are first reverted, respondents' actions in reverting them are fraught with illegality and arbitrariness.

4. Respondents would submit that as a result of instructions in the scheme dated 1.11.93 and after formation of separate cadres in the Department of Telecommunications and Department of Posts, the number of posts in Stenographers Grade 'C' in the Department of Telecommunications has come down from 183 to 109. Ten regular Stenographers Grade 'C' from the select list/limited departmental examination, 1992 joined the Department and this has resulted in reversion of junior-most 22 ad hoc Grade 'C' stenographers. Applicants do not have any right to continue on ad hoc basis when regularly selected officials were available.

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5. As regards applicant's contention that there are juniors officiating as ad hoc Stenographers Grade 'C' in other cadre, respondents have submitted that these are decentralised grades and appointments/promotions/ad hoc arrangements are resorted to cadre-wise by individual Ministries pending availability of regular candidates. Therefore, such inter-cadre disparities, particularly in ad hoc promotions, are likely to exist. Such arrangements cannot be held to be discriminatory or invalid since relevant grades are decentralised. That apart, while issuing orders for restructuring (i.e. scheme dated 1.11.93) in the CSSS, DoPT also issued instructions for absorption of surplus regular officials in any grade by allocating them to other Ministries/ Departments. Such adjustment was confined to regular hands. Since the applicants were appointed as Stenographers Grade 'C' only on ad hoc basis, they had to be reverted as there were no vacant posts where those regular surplus could be adjusted.

6. Respondents deny the contention of the applicants that there has to be one common seniority list of CSSS. As per respondents, service consists of separate cadre and initial appointments are made only in that cadre. However, for the purpose of common promotion to the next higher grade, DoPT determines their length of seniority or a zone of consideration on a particular date and those who fall within that zone of consideration and are found eligible are given promotions in the vacancies in their own cadre. When there are excess number of eligible candidates in a particular Ministry, they are considered for adjustments in promotional posts which

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remain unfilled in other cadres/Ministries. Since, however, some time is taken in going through this process and as and when there arise vacancies on account of deputation/leave/resignation etc. Ministries have been authorised to make ad hoc promotions for short periods by promoting Stenographers on the basis of seniority. Such arrangements are essentially temporary in nature and cannot be filled on the basis of a common seniority list by shifting persons from one Ministry to other. Respondents also contend that none juniors to the applicants have been allowed to continue after their reversion in the Department of Telecommunications.

7. In the context of the aforesaid rival contentions advanced by learned counsel for both the parties, the issue that arises for determination is hereunder:

Are the claims of applicants to regularise their services against available vacancies of Stenographers Grade 'C' as well as to continue them on ad hoc basis till they get formally regularised sustainable in the eyes of law?

8. We have perused the records and gone through the CSSC Rules, 1969, annexed to the OA. Rule 2(d), (e) and (f) read as follows:

"(d) authorised permanent strength in relation to any grade of a cadre means the strength of permanent unspecified posts in that grade and cadre, against which substantive appointments be made

(e) cadre means the group of posts included in the grades mentioned in rule 3 in any Ministry or Office specified in column 2 of the First Schedule and in all the offices specified against it in column 3 of that schedule;

NO

(f) cadre authority in relation to any cadre means the Ministry or office specified.

9. Rule 4 relates to constitution of separate cadres and reads as follows:

"Each Ministry or office specified in column 2 of the First Schedule and all the offices specified against such Ministry or office in column 3 of that schedule shall form a separate cadre and officers of the four grades of the service in each cadre shall be borne on a separate gradation list drawn up for that cadre"

10. Rule 12 relates to recruitment of grade 'C' of the service. Rule 12(1) and (2) also read as follows:

"(1) Substantive vacancies in Grade 'C' of the service in any cadre shall be filled by the substantive appointments of persons included in the select list for the grade in that cadre, such appointments being made in the order of seniority in the select list except when, for reasons to be recorded in writing a person is not considered fit for such appointment in his turn.

(2) Temporary vacancies in Grade 'C' of the service in any cadre shall be filled by the appointment of persons included in the select list for the grade in that cadre. Any vacancies remaining unfilled thereafter shall be filled by the temporary promotion on the basis of seniority, subject to the rejection of the unfit of officers of Grade 'D' of the service in that cadre who have rendered not less than five years approved service in the grade and are within the range of seniority. Such promotions shall be terminated when persons included in the select list for Grade 'C' become available to fill the vacancies"

11. The aforesaid rules make it clear that CSSS is one service. It consists of a number of cadres. Each cadre will have own permanent strength as per Rule 5. The Ministry concerned is the cadre controlling authority. Rules provide that cadre officers shall be posted against a duty post of the appropriate grade in the cadre. Rule 12 quoted above makes it clear that a substantive vacancy in Grade 'C' of the service in any cadre shall be filled by the substantive appointments of the persons included in the select list for the grade in that cadre. Similarly, as per Rule 12(2) temporary vacancies are to be filled by officers of grade 'D' of



(X)

the service in that cadre who have put in the requisite service. Thus, aforesaid Rule makes it clear that ad hoc promotions are to be made in each cadre according to the seniority of that particular cadre. The applicants cannot, therefore, make a claim for ad hoc promotions against vacancies available in cadres other than their own. Their plea that they should not be reverted from ad hoc appointments in grade 'C' till persons recruited from latter examinations in other Ministries are first reverted, cannot therefore be sustained.

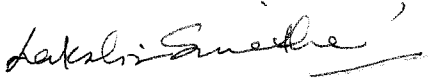
12. It is of course true that Rule 2(h) speaks of a common seniority to be prepared and revised in accordance with the regulations to be framed by the Central Government. We do not find that, prima facie, such a common seniority list is to be used in filling up of the cadre posts except when the range of seniority results in some eligible officials requiring adjustment in cadres other than their own case.

13. That apart, law on the position of regularisation is now well settled. Regularisation can be made pursuant to a scheme or an order in that behalf. Mere working on a post for a number of years on ad hoc basis will not vest a person with the right to get regularised on a post which is meant to be filled up by regular recruitment process under statutory rules. If any authority is required for this proposition, it is available in the case of Mukesh Bhai Chotabhai Patel & Ors. Vs. Joint Agri. Marketing Advisor, Govt. of India & Ors. AIR 1995 SC 413. It is not in dispute that respondents intend to replace the applicants by regularly selected hands who are admittedly seniors. It

is also not in dispute that ad hoc orders of promotion to the applicants were issued with the condition that "these appointments are temporary on ad hoc basis and hence will not confer on these officials any right for absorption in Grade 'C' of CSSS or seniority in that grade". It is also submitted by the respondents that no one junior to the applicants in the respondent-Ministry has been allowed to continue on ad hoc promotion after their reversions were ordered. Law stipulates that ad hoc appointee has no right to continue in that capacity as a matter of right.

14. In the light of the position of law as well as detailed as aforementioned, applicants' case has no merit and deserves to be dismissed. We do so accordingly but without any order as to costs.

(S.P. Biswas)  
Member(A)

  
(Mrs. Lakshmi Swaminathan)  
Member(J)

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