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Central Administrative Tribunal
PRINCIPAL BENCH

Shri. A. Vedavalli Vice Chairman
Member

Pre-delivery ORDER in O.A. 38/94

T. A. / O. A. No. of 198.....

is sent herewith for consideration.

With regards,

Amarnath
(N. Sahai)

15/6/98

~~Recd~~

16/6 Thanks. I agree.

With regards -

AV
17/6/98

Handed over Shri N. Sahai - Member(A),

Central Administrative Tribunal
Principal Bench: New Delhi

38 1994
OA No.....of.....decided on29.6.94.....

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Name of Applicant: Anand Prakash Sharma & ors.

By advocate: Shri S.C.Sharma

Versus

Name of Respondents: U.O.I. through Secy., Min.of Labour, New Delhi & ors.

By advocate: Shri G.R.Nayyar and Shri A.K.Behera

Corum

Hon'ble Mr. N. Sahu, Member (A)

Hon'ble Dr.A.Vedavalli, Member (J)

1. To be referred to the Reporter or not? No

2. Whether to be circulated to other
Benches of the Tribunal? NO

N. Sahu
(N. Sahu)
Member (A)

29.6.94

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 38/94

New Delhi, this the 29th day of June, 1998

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

26

1. Anand Prakash Sharma,
S/o Shri Shiv Ram,
R/o H.No.141, ESIC Colony, Sector-56,
Noida.
2. Nandan Singh Bisht,
S/o Shri M.S. Bisht,
R/o H.No.151, ESIC Colony, Sector-56,
Noida.
3. Rama Kant Vasishtha,
S/o Shri L.L. Vasishtha,
R/o H.No.199, ESIC Colony, Sector-56,
Noida.
4. Jagu Ram,
S/o Shri Muni Lal,
R/o of H.No. H-30, Sector-12,
Noida.
5. Rajinder Kumar Sharma,
S/o Shri Durga Dass Sharma,
R/o H.No. 224, ESIC Colony,
Noida.

... Applicants

(By Advocate Sri S.C. Sharma)

Versus

1. Union of India
through its Secretary,
Ministry of Labour,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
2. Director General,
E.S.I. Corporation,
Panchdeep Bhawan,
Kotla Road, New Delhi.
3. Directorate (Medical) Delhi,
E.S.I. Corporation, E.S.I.C.,
Hospital Complex, Basaidarapur,
Ring Road, New Delhi-15.
4. Smt. Radha Ajwani.
U.D.C.,
Directorate (Medical) Delhi,
E.S.I. Corporation, E.S.I.C.,
Hospital Complex, Basaidarapur,
Ring Road, New Delhi-15.

(A)
21

5. Shri Anil Kumar Katal,
U.D.C.,
Directorate (Meidcal) Delhi,
E.S.I.Corporation, E.S.I.C.,
Hospital Complex, Basaidarapur,
Ring Road, New Delhi-15.
6. Shri Surinder Kumar,
U.D.C.,
Directorate (Meidcal) Delhi,
E.S.I.Corporation, E.S.I.C.,
Hospital Complex, Basaidarapur,
Ring Road, New Delhi-15.
7. Shri Satish Chand Jain
U.D.C.,
Directorate (Meidcal) Delhi,
E.S.I.Corporation, E.S.I.C.,
Hospital Complex, Basaidarapur,
Ring Road, New Delhi-15.
8. Shri Rajinder Singh Bisht,
U.D.C.,
Directorate (Meidcal) Delhi,
E.S.I.Corporation, E.S.I.C.,
Hospital Complex, Basaidarapur,
Ring Road, New Delhi-15.
9. Shri Chet Ram,
U.D.C.,
Directorate (Meidcal) Delhi,
E.S.I.Corporation, E.S.I.C.,
Hospital Complex, Basaidarapur,
Ring Road, New Delhi-15.
10. Shri Ramesh Chander Gupta,
U.D.C.,
Directorate (Meidcal) Delhi,
E.S.I.Corporation, E.S.I.C.,
Hospital Complex, Basaidarapur,
Ring Road, New Delhi-15.

.... Respondents

(By Advocate Shri G.R. Nayyar / Shri A.K. Behera)

O R D E R

BY HON'BLE SHRI N. SAHU, MEMBER (A)

The relief prayed for in this O.A. is as under:-

(Signature)
"The respondents be directed to drop the seniority list circulated vide Memo No. DMA-24/14/1/90-E.I(M), dated 22.12.92 and maintain/confirm that the seniority list circulated vide Memo No. DMA-24/14/1/90-E.I(M), dated 1.8.88 and 19.5.92 is in order."

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2. It is contended by the applicants that a few Upper Division Clerks namely Smt. E.M. Sundari, Smt. Radha Ajwani and Shri Anil Kumar Katyal shown at serial nos. 166, 170 and 174 respectively in the seniority list dated 22.12.96, have been ranked senior to the applicant Shri Anand Prakash Sharma (other applicants are similarly situated). These UDCs ranking senior, have qualified the Special U.D.C. Test held on 16.10.88, after the date of the applicants' regular promotion to the post of U.D.C. on 14.6.88.

3. It is next contended that the rota quota principle should be made effective from 11.1.89, i.e. the year in which the result of the test was declared and these persons were promoted. It is urged that the seniority list circulated on 22.12.92 is inconsistent with the various judgements of the Central Administrative Tribunal pronounced in similar cases. They cite the decision of R.D. Gupta and others vs. Union of India dated 21.12.89 of C.A.T., Principal Bench, New Delhi. The operative portion is as under:-

"The inter-se-seniority of the promotees in the cadre of UDCs shall be determined on the basis of their total length of service which will be reckoned from the actual date of their promotion in accordance with the Regulation 28(2) of the ESIC (Recruitment) Regulations, 1965. If an employee has been promoted after the DPC has found him FIT for promotion, that period will also count for the purpose of reckoning seniority, irrespective of whether his promotion may be termed as ad-hoc or temporary or officiating....."

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This view was confirmed by the Full Bench in Mahendra Kumar's case.

4. The main grouse of the applicant is that while forming the impugned seniority list dated 22.12.92, the respondents have not considered the length of service. It is stated that the Headquarters Office has recently circulated the seniority list of UDCs for the Recruitment years 1988 to 1992 vide Memorandum No.A-24/14/1/90.E-II(A), dated 30.5.93 prepared in accordance with the final judgement of the Central Administrative Tribunal, New Delhi in the case of Mrs. Hardeep Kaur Bhatia and anr. But when it came to the applicants' case, the above judgement has been totally ignored.

5. The E.S.I. has three wings. Bhatia's case has been implemented in the Headquarters Wing as well as in the Regional Wing. But when it came to the third wing, the ruling in Bhatia's case was not followed. Persons who qualified the departmental test in January, 1990 in the Headquarters office, have been given the seniority during the Recruitment year 1990 whereas in D(M)D Office, those who qualified the same test in January, 1990, have been given the seniority during the recruitment year 1989, which is stated to be discriminatory.

6. After notice, the respondents clarified the rule position as under:-

"1. The recruitment to the post of Upper Division Clerks is 100% by promotion, in accordance with the following provisions of the ESI Recruitment Regulations.

A. 75% of the vacancies shall be filled by promotion on the basis of seniority, subject to rejection of unfit.

B. The remaining 25% vacancies shall be filled by promotion on merits on the basis of Departmental Competitive Examination.

2. Seniority is accorded with reference to the position in the merit list drawn on the basis of Competitive Examination.

3. The overall seniority list is drawn on the basis of allocation of vacancies in the recruitment regulations in accordance with the Govt. of India instructions on the subject.

4. The Departmental Competitive Examinations for the years 1988 and 1989 were held on 16.10.88 and 30.9.89 respectively.

Smt. Radha Ajwani, Respondent no.4, Anil Kumar Katyal, respondent no.5, Surinder Kumar, respondent no.6 and Shri Satish Chand Jain, respondent no.7 qualified in the said Competitive Examination of 1988. Shri Rajinder Singh Bisht, respondent no.8, Chet Ram, respondent no.9 and Ramesh Chander Gupta, respondent no.10 qualified in the said Competitive Examination of 1989. The respondents 4 to 7 who appeared and qualified in the Competitive Examination held in 1988 for the vacancies falling in that year have been assigned seniority in that year. Similarly the respondents 8 to 10 who appeared and qualified in the Competitive Examination held in 1989 for the vacancies pertaining to that year have been assigned seniority in that year, in accordance with the Govt. of India instructions on the subject."

7. It is submitted that the seniority list maintained at Headquarters office or in the Regional Office cannot be compared because Medical Directorate has a separate cadre of UDCs, under different Appointing Authority. It is contended by the learned counsel Shri Nayyar that there was no other way by which the rule could be complied with than what has been done by the respondents. For the recruitment process for filling up the posts of UDC, a DPC was held in June, 1988 and in the same month, the notices were issued for initiating the test. Test was held on 16.10.88 and the results were declared in January, 1989. The entire action of filling of vacancies from both the sources was completed well

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before the expiry of the recruitment year on 31.3.89. Similarly, for the financial year 1989-90, the DPC was held in July, 1989. Test was held in September, 1989 and the vacancies from both the sources were filled up before the expiry of the recruitment year.

8. Our attention was drawn by Shri G.R. Nayyar to the orders of the Hon'ble Supreme Court in the case of Naresh Kumar and anr. vs. R.D. Gupta and ors. The Supreme Court clarified that while the directions of the Tribunal in Gupta's case are implemented, the quota and rota shall be kept in view.

9. The brief question before us is the implementation of Recruitment Rules. These recruitment rules are mandatory. We are satisfied that the respondents had no other way of implementing the rota quota principle. Those successful in the Limited Competitive Examination, have to be given their places in that very year on 25% vacancies. As the processes were initiated almost simultaneously, we hold that rota quota principle had not broken down.

10. In view of the Supreme Court directions in Gupta's case cited above, this O.A. has no merit and is accordingly dismissed. No costs.

A. Kedavalli
(Dr. A. Vedavalli)
Member (J)

Charan Singh Sahu
29.6.98
(N. Sahu)
Member (A)

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