

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 436 of 1994

New Delhi, this the 8th day of December, 1999

HON'BLE SH. S. P. BISWAS, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

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1. Shri R.K. Jain
S/o Shri Virender Kumar Jain
R/o AK-86 Shalimar Bagh,
Delhi-52.
2. Shri C. Hubert Pothiraj
S/o Shri P. Chellaraj
R/o D-758 Pocket-B,
Sector 1 DIZ Area,
Gole Market,
New Delhi-1.
3. Shri G. Ramachandran
S/o Shri G.S. Perumal
R/o D-551, Sarojini Nagar,
New Delhi-23.
4. Shri A.K. Gautam
S/o Shri Bhhitarmal
R/o F-41 Pragti Vihar Hostel,
Lodhi Road Complex,
New Delhi.
5. Shri D.K. Mittal
S/o Shri C.L. Mittal
R/o AB 46, Mainwali Nagar,
Diragari,
Delhi-41.

.....Applicants

(By Advocate: Shri D.R. Gupta)

Vs.

1. Union of India
through its Secretary,
Department of Expenditure,
Ministry of Finance,
North Block,
New Delhi.
2. Chief Adviser (Cost)
Ministry of Finance (Department of Expenditure)
Lok Nayak Bhawan,
New Delhi.
3. Shri B.S. Raghunathan
Deputy Director (Cost),
Ministry of Petroleum and
Natural Gas,
Shastri Bhawan,
Dr. Rajender Prasad Road,
New Delhi.

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4. Shri R. Asoken
Deputy Director (Cost)
Bureau of Industrial
Costs and Prices,
Lok Nayak Bhawan,
New Delhi.

.. Respondents

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Shri S.M. Arif, Counsel for respondent Nos. 1 and 2.

Shri George Paracken, Counsel for respondent Nos. 3 and 4.

O R D E R

By Hon'ble Shri Kuldip Singh, Member (J)

Shri R.K. Jain and 4 others have filed this application under Section 19 of the Administrative Tribunals Act, 1985 against respondents as they claim to be aggrieved by the seniority list of the officers of Senior Time Scale of Deputy Director (Cost) in the Indian Cost Accounts Service circulated by the Ministry of Finance, Department of Expenditure vide their OM No.A.12018/1/93-Admn.I dated 13.8.93 whereby the seniority of the promotee officers figuring at Sr. No.14 to 29 of the aforesaid seniority list have been depressed by interpolating the name of the direct recruits above them. Thus their seniority in the Senior Time Scale of Deputy Director (Cost) already determined by the respondents as on 1.10.190 has been revised to their prejudice without any show cause notice which is patently illegal and the same is violative of Article 14 and 16(1) of the Constitution. A copy of the Ministry of Finance OM dated 13.8.93 circulating the seniority list as on 30.4.93 and the earlier seniority list as on 1.10.90 are annexed as A-I and A-II respectively. While assailing the seniority list, they have prayed that the seniority list circulated by the respondents vide Memo dated 30.4.93 and Memo dated 11.2.94 rejecting their representation be quashed. They

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have further prayed that the respondents be directed to give effect to the seniority list of Deputy Director (Cost) and that the seniority list which was earlier issued on 1.10.90, be maintained. (1)

2. The facts in brief are that the applicants belong to the service known as Indian Cost Accounts Service (hereinafter referred to as ICAS), Ministry of Finance, Department of Expenditure. The said service was constituted somewhere in the year 1982. Initially the original rules provides for recruitment to the grade of Deputy Director (Cost), which post is being held by the applicants presently, entirely by promotion from the grade of Assistant Director (Cost).

3. The rules were amended in the year 1987 vide Notification No.A-12018/1/86-E.I(A) dated 18.6.87, Annexure R-I which provided recruitment through 75% by promotion and 25% by direct recruitment.

4. In the seniority list issued on 1.10.90, the names of the applicants appeared at S.Nos. 21, 19, 25, 17 and 20 respectively. But after this, seniority list issued on 30.4.93 the seniority of the applicants have been pushed down below Respondent Nos. 3 and 4 S/Shri B.S. Raghunathan and R. Asoken. These two persons have been appointed vide Ministry of Finance letter dated 23.5.91 and joined the services w.e.f. 1.10.91 and 10.10.91 and their names were interpolated above the applicants. So it is stated that their names were

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interpolated but they cannot be permitted to reckon their seniority in the grade prior to that date when they were not borne on the grade of Deputy Director (Cost). (18)

5. It is further pleaded that in the seniority list of 1.10.90, no slots for direct recruits were kept and rightly so as the vacancies in that grade pertained to the year prior to the revision of the Recruitment Rules and there was no provision for roster system and it was not being maintained on the basis of which the respondents were entitled to induct direct recruits against the slots ear-marked for them.

6. It is further pleaded that since the applicants were promoted on regular basis w.e.f. 2.3.1989, so their seniority had been fixed by the competent authority and they cannot be placed at disadvantage by down grading their seniority.

7. It is further pleaded that according to the rotation of the vacancies between promotees and direct recruits, no notice was given to the existing incumbents of the post who could also have applied for consideration for appointment to the post of Deputy Director (Cost) against direct recruitment quota as some of their junior colleagues have been adversely affected.

8. It is further pleaded that the principle of rotation of quota which is still to be followed for determining the inter-se seniority of direct recruits and promotees by following the practice of keeping vacant slots to be filled by direct recruits of later years

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because the direct recruits have an unintended seniority over the promotees who are already in position. This was to be dispensed with as per DOP&T OM No. 35014/2/80-Estt.(D) dated 7.2.86.

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9. It is also stated that once an incumbent has been appointed to the post in accordance with the rules, his seniority has to be counted from the date of appointment.

10. It is further pleaded that in the case of direct recruits, certain eligibility conditions were also relaxed by the UPSC so they cannot be considered eligible for such appointment prior to that date. As such, it is prayed that the seniority list be quashed and the earlier seniority list of 1.10.90, be maintained.

11. The respondents have contested the O.A. and have filed their separate replies.

12. Let us first take the counter filed by respondents 1 and 2. They have stated that after the amendment of the Recruitment Rules, 12 vacancies each were filled by promotion during 1987 and 1989. Thereafter, a requisition was sent to the Union Public Service Commission for filling up of 6 vacancies by direct recruitment. The UPSC recommended 5 candidates out of which one candidate did not join and out of remaining, one candidate resigned. Since there was no direct recruitment corresponding to the recruitment year 1987, no direct recruits were interpolated along with the seniority list

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of 1987. However, as per rules, the direct recruits have been assigned seniority along with the promotees of 1989 in the ratio of 3:1.

13. It is admitted that the seniority is to be assigned as per the provisions of ICAS Rules and the guidelines of the Department of Personnel vide their OM dated 7.2.86.

14. It is further stated that when the seniority list of 1.10.90 was issued, the direct recruits in the grade of Deputy Director had not by then joined and were not physically available.

15. It is further stated that the applicants were aware of the provisions of the direct recruitment in the rules. The seniority of the applicants vis-a-vis direct recruits has been fixed as per the rules.

16. As regards notice to the applicants for an exam being held by the UPSC was concerned, a requisition was placed with the UPSC and it was UPSC, who had issued an advertisement for the post and the applicants were at liberty to apply for the same and department was not under any obligation to issue any notice to them.

17. It is further stated that the direct recruits have been assigned seniority as per their OM dated 7.2.86 which corresponds to the requisition sent to the UPSC.

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18. As far as the allegation of relaxation of eligibility is concerned, it is stated that the UPSC was the competent authority to grant relaxation in the case of reserved candidates and UPSC had granted concession to reserved candidates and not to any other candidate and it was duly informed vide Annexure R-III. (2)

19. So far as reply filed by respondents No. 3 and 4 are concerned, they have pleaded that after the amendment of the Recruitment Rules, 12 vacancies were filled by promotion in the year 1987 and no action was taken to fill up the direct recruitment quota. During 1988 there was neither any promotion nor direct recruitment. In the year 1989, 12 Assistant Directors were promoted as Deputy Director (Cost) though they had not completed the requisite length of qualifying service. Thereafter, a requisition was sent to the UPSC for six direct recruits, out of which 3 were to be tagged with the vacancies fallen in the year 1989 and 3 were to fill up the backlog of the vacancies of the year 1987. They have also stated that since the action was initiated for the recruitment year 1989 and the direct recruits have been assigned seniority along with the promotees of 1989 in the ratio of 3:1, so they also prayed for the dismissal of the OA.

20. We have heard the learned counsel for the parties and have gone through the records.

21. The main grievance of the applicants is that since they had been promoted in the year 1989 and vide seniority list dated 1.10.90 their seniority had been

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confirmed, the direct recruits could not have been
interpolated in between. In their case, the DPC had
recommended for promotion as on 2.3.89 and the direct
recruits had joined later, so their seniority should be
counted from the date of joining. (22)

22. The second aspect of their argument is that the
vacancies in the cadre of Deputy Director (Cost) to which
the applicants had been appointed, existed prior to 1987
when the first amendment to the Recruitment Rules was made
and since the vacancies existed prior to the year 1987
when the post of Deputy Director could be filled up only
by way of promotion, so direct recruits cannot be given
any quota in the appointment to the post of Deputy
Director (Cost) and they cannot be given any slots for the
vacancies which were available in the year 1989 but which
actually belong to the year 1987.

23. In reply to this, the official respondents as
well as the private respondents submitted that under the
old rules the present applicants had not acquired even
eligibility to be promoted as Deputy Directors (Cost).
Had the rules been not amended in the year 1987, the
present applicants would have continued to work as
Assistant Directors and they would not have been made
Deputy Directors (Cost) even in the year 1989. It is only
after the amendment into the rules, the eligibility
conditions were relaxed so the applicants could be
promoted and had been appointed as Deputy Directors (Cost)
by way of promotion. (22)

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24. So the main question which requires a considered answer is whether the vacancies in the grade of Deputy Directors (Cost) which the present applicants are holding for filling up those vacancies, whether the same could be filled up by unamended rules or the same could be filled up by the amended rules. In case we come to the conclusion that the post which the applicants are holding could be filled up only after the amendment of the rules, then in that event the post which had been filled up in the year 1989 in that case the direct recruits would have to be given their appropriate slots.

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25. To the allegation of the respondents that under the unamended rules the applicants were not eligible to be promoted as Deputy Director (Cost), there is no denial by the applicants in the rejoinder. In a way the applicants rather accepted that under the unamended rules probably they could not have been promoted. They could get a promotion only after the amended rules were applied for filling up the vacancies. So once an amended rules were applied to give promotion to the applicants, so they cannot claim that the unamended rules should be applied and direct recruits should be denied any quota for the vacancies which were filled in the year 1989 since the vacancies belong prior to the era of amended rules and, i.e., when old rules were prevalent. The applicants cannot have a benefit of amended rules to have promotion and at the same time deny the quota to the direct recruits. Thus, for the purpose of fixation of seniority, the applicants are governed by the OM dated 7.2.86 as well as the amended ICAS Rules and the respondents have

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categorically stated that the impugned seniority list had been issued by applying the provisions of ICAS Rules and the guidelines of DOPT vide their Memo dated 7.2.86.

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26. The applicants have also stated in para 4.7 of their OA that the guidelines as given in the OM dated 7.2.86 are to be dispensed with because the vacancies to which the applicants had been given promotion belong to the year 1987 when no direct recruitment was available. **4** But this contention of the applicants again have no merits because the vacancies of the year 1987 could not be given to the applicants because at that time neither the direct recruits nor the eligible Assistant Directors were available to be promoted as Deputy Directors (Cost) under the old rules and the applicants became eligible and have been appointed only after the rules were amended and after the DPC had recommended them on 2.3.89. Thus they have been appointed in the year 1989 only when the direct recruits were also made available by the UPSC. So seniority list had to be issued in accordance with the OM dated 7.2.86.

27. So in accordance with the OM the applicants were considered by the DPC held in the year 1989 and they were recommended on 2.3.89. Direct recruits had also come in the year 1989 so the seniority has been rightly assigned in accordance with the OM dated 7.2.86.

28. In view of the above discussion, no interference is called for. The OA has no merits and it is accordingly dismissed. No order as to costs.

Kuldeep
(KULDIP SINGH)
MEMBER (J)

Ramdas
(S. P. BISWAS)
MEMBER (A)