

(3) **CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH**

D.A.No.1071/2000 with MA-211/2001

New Delhi: this the 20th day of February, 2001.

HON'BLE MR.S.R.ADIGE VICE CHAIRMAN (A). (32)

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

1. B.D.Warial
Assistant,
D-1/6, Jeevan park,
New Delhi-59
2. B.R.Virmani,
A 58/145-B,
Janakpuri,
New Delhi-58.
3. C.Vajnani (Mrs),
QP-9, Pitampura,
Delhi-34.
4. Dharampal,
RZ/IC(609),
Indra Park,
Gali-6,
palam Colony,
New Delhi- 45.
5. Hari Om Sharma,
595/VIII, R.K.Puram,
New Delhi-22
6. K.G.Sood,
658, 4-Storey flats (Near Vishal Cinema),
Rajouri Garden,
Delhi-27.
7. Nand Kishore Ahlawat,
I-321, Sarojini Nagar,
New Delhi-23
8. Pratap Singh,
Vill.Aurangpur,
PO. Dadri Toye,
(Distt.Jhajjar),
Haryana.
9. R.K.Bodwal,
Kothi No.303-D,
Sector-14,UE,
Gurgaon.
10. R.K.Thakur,
F-555, Raj Nagar-II,
palam Colony,
New Delhi.
11. Virender Kumar Jain,
8-25/C-1, IIT Campus,
Hauz Khas,
New Delhi.

....Applicants.

(By Advocate: Shri G.K.Agarwal)

Versus

1. Union of India
through Secretary,
Dept. Pers. & Trg., North Block,
New Delhi -11.

2. The Secretary,
Union Public Service Commission,
Shahjehan Road,
New Delhi-11

3. Abhijit Roy,
Adhoc Section Officer,
UPSC
Shahjehan Road,
New Delhi-11.

4. Ashok Kumar (S/C),
Adhoc SO UPSC,
Shahjehan Road,
New Delhi-11

5. Charanjit Gulati,
adhoc SO UPSC,
Shahjehan Road,
New Delhi-11

6. Rajesh Sharma,
adhoc SO, UPSC
Shahjehan Road,
New Delhi-11

7. Ram Kumar,
adhoc SO, UPSC,
Shahjehan Road,
New Delhi.

8. Satinder Kaur (Mrs),
adhoc SO, UPSC,
Shahjehan Road,
New Delhi-11

9. SS Rawat,
adhoc SO, UPSC,
Shahjehan Road,
New Delhi-11.

10. Thomas Mathew,
adhoc SO,
UPSC, Shahjehan Road,
New Delhi-11

11. TPN Singh,
adhoc SO, UPSC,
Shahjehan Road,
New Delhi-11.

12. Vazir Singh,
adhoc SO, UPSC,
Shahjehan Road,
New Delhi-11

.... Respondents

(By Advocate: Shri S.K. Gupta)

ORDER

S.R. Adige, VC(A)

(3A)

Applicants impugn respondents' order dated 5.5.2000 (Annexure-A-1) and dated 25.5.2000 (Annexure-A-2) reverting them from the post of Section Officer, and respondents' order dated 8.5.2000 promoting Respondents 3 to 12 as Section Officer. Respondents' order dated 20.4.2000 (Annexure-A-4) is also challenged. Applicants seek a direction that their initial promotion as Section Officers since 1997 was/is regular, and that shall continue as SOs as if the impugned orders had never issued.

2. Applicants aver, vide para 4.7 of the OA that they were promoted to SO grade in 1997 (vide Ann.-A/5 Colly) on various dates, by following the criteria of seniority-cum-fitness, while their seniors who had not rendered the prescribed 8 years of approved service, as defined under Rule 2(c) CSS Rules, 1962. ^{^ were not promoted} Applicants further aver in that para that by virtue of order dated 20.4.2000, Govt. relaxed the definition of approved service for direct recruit assistants of recruitment years 1988, 89 and 1990 to give them the benefit of one year, as a result of which they became eligible to be promoted as SOs, upon which respondents have promoted Respondents 3 to 12 as SOs and simultaneously reverted applicants by impugned orders, which it is contended, is illegal and arbitrary.

3. Respondents have filed their reply in which they have challenged the OA. They state that applicants who are regular Assistants in CSS cadre of UPSC belong to Select List of 1989 and were promoted as SO on purely adhoc basis in 1997, on the clear stipulation in the

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promotion orders that the period of their adhoc promotion would not count towards seniority, regular promotion etc. in the grade of SO. It is stated that some direct recruit Assistants, who were senior to applicants in the same Select List of 1989 were not eligible for promotion at that time as they had not completed the prescribed 8 years of approved service. They would have completed 8 year of approved service on 30.6.2000. However, keeping in view that there was inordinate delay in conducting the exam. for the select list of 1988; 1989 and 1990, DP & T issued impugned order dated 20.4.2000 providing necessary relaxation in approved service for direct recruit Assistants of Select List of 1988, 1989 and 1990, consequent to which D.R. Assistants of 1989 batch had acquired the prescribed 8 years of service, and as they were senior to applicants they were promoted as SOs on adhoc basis w.e.f. 5.5.2000. It is also stated that a number of regular SOs had also joined the post of SO, which necessitated applicants' reversion.

4. Applicants have filed their rejoinder in which they have denied respondents' assertions and broadly reiterated their own.

5. We have heard applicants' counsel Shri G.K. Agarwal, and respondents' counsel Shri S.K. Gupta.

6. The first ground taken in the OA is that no show cause notice was given before reversion, though the same was required. The 1997 orders promoting applicants as SOs and all subsequent promotion orders in regard to applicants clearly state that these

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promotions are on adhoc basis and will give applicants no right to claim seniority, regular promotions etc. No rule or instruction has been shown to us requiring respondents to issue show cause notice to applicants before reverting them. ^{from their adhoc promotions} This ground therefore fails.

7. The next ground taken, that applicants' initial promotion as SO in 1997 was a regular promotion and not an adhoc promotion is disproved by the very wording of Annexure-A-5 (Colly) orders which clearly speak of applicants' promotion as SO on adhoc basis. Hence this ground also fails.

8. The next ground taken is that those who were senior to applicants, but were not promoted in 1997 because they did not have the 8 years prescribed service, had no lien on the promotional posts, because there was/is no quota for them for promotion from Assistant to SO. It is not the case of respondents official or private that Respondents No. 3 to 12 have any lien on the posts of SO or that there is any quota. Indeed, if there had been any quota for direct recruits such as Respondents 3 to 12, and promoted such as applicants, each could have been promoted on adhoc basis in their own quota. In any case applicants do not also have any lien on the post of SO to which they have been promoted on adhoc basis. Hence this ground fails.

9. The next ground taken is that as per DP & T's OM dated 10.4.89, backlog of vacancies must be filled yearwise and only those who were eligible on dates of occurrence of vacancies could be considered. Therefore, as in 1997, so also as of date, Respondents 3 to 12 are not eligible to be promoted in vacancies occupied by respondents. This OM is applicable in regard to regular promotions made against regular vacancies on

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the recommendations of a regularly constituted DPC under the aegis of the Cadre Controlling Authority. In the case before us, the promotions are not regular promotions, but adhoc promotions made as a stop gap arrangement till regular promotions are made by a regularly constituted DPC under the aegis of the Cadre Controlling Authority. Hence this ground fails.

10. The next ground taken is that adhoc promotions cannot be replaced by fresh adhoc promotion. This ground cannot be advanced to countenance a situation where those senior in the cadre of Assistants who could not earlier be promoted on adhoc basis, when their juniors were so promoted, because they did not possess the eligibility criteria of 8 years approved service, are denied adhoc promotion even after they acquire the eligibility qualification. If such a situation was countenanced, it would be a violation of Articles 14 and 16 of the Constitution, in as much as seniors would continue to remain as Assistants while their juniors would continue to function as SOs. We are supported in our view by the CAT PB orders dated 10.7.2000 in OA No. 938/2000 S.K.Sharda Vs. UOI & Ors., and the order in OA No. 2398/99 N.K.Dudeja Vs. UOI & Ors. Nothing has been shown to us to indicate that the aforesaid orders of the Tribunal have been modified or set aside. Hence the above ground also fails.

11. The next ground taken is that no distinction can be made between "long term regular temporary promotion" and "substantive promotions". Applicants claim that their promotions were "long term regular temporary promotions". A plain reading of Annexure-A/5 Colly, promotion orders makes it clear that the applicants' promotions were purely adhoc promotions. There is nothing in those promotion orders to state that the promotions

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were "long term regular temporary promotions" as claimed by them. Hence this argument also fails.

12. It has next been contended that it was illegal to relax the definition of approved service in favour of direct recruit Assistants when Assistants with prescribed 'approved service' were available in sufficient numbers. We note that the relaxation has been granted with UPSC's concurrence in exercise of the powers available under rule 25(a) CCS Rules 1962 as a one time relaxation to mitigate genuine hardship in view of the inordinate delay in holding exams for the recruitment years 1988, 1989 and 1990 over which the direct recruit Assistants had no control. No cogent reasons have been advanced to explain why it was illegal to give the relaxation. Hence this ground also fails.

13. The next ground taken is that one who became eligible earlier, remained senior for the purpose of being considered for promotion, even after an 'otherwise' senior became eligible subsequently. No distinction can be made between a person who is senior and one who is 'otherwise senior'. A person is either senior to another or not. Furthermore seniority is not the same thing as eligibility. A person may be senior and yet not be eligible for promotion. It is ^{just} in such a case, that as per applicants' own averments (para 4.07 of OA), their seniors, who had not rendered the prescribed 8 years approved service, could not be promoted on adhoc basis as ^{applicants themselves} SOs when ~~they~~ were promoted. The short question is whether having now acquired eligibility, these seniors

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should still be denied adhoc promotion as SOs pending regular promotions as SOs in accordance with rules. In our considered view they cannot be denied the adhoc promotion, and if in the process their juniors such as applicants have to be reverted, that is unavoidable as they have to make way for their seniors who have now acquired the necessary eligibility qualifications.

14. While hearing was in progress, applicants have filed MA No.211/2001 in which they themselves have listed as many as 6 cases decided by CAT PB on this very issue, in which applicants themselves admit that while as a general rule adhoc cannot be replaced by another adhoc, an eligible senior can replace an eligible senior even in an adhoc capacity. In that MA it has been stated that in two out of the six cases the Tribunals' orders have been stayed, while in one case respondents have been directed to keep one post of SO vacant. Nothing has been shown to us however to establish that the Tribunal's orders in the aforesaid six cases has been modified or set aside. Till then, we as a Div. Bench are bound by the ratio of the rulings in those 6 cases, which go against applicants' claim.

15. In that MA No.211/2001 it has also been contended that all those orders in the aforementioned 6 cases are per incuriam, because the Tribunal ignored the law enunciated by the Hon'ble Supreme Court in P.S. Mahal's case (1984) 4 SCC 545 and other cases that a direct recruit can count his seniority from the date of his appointment and not from the date of the vacancy. Therefore a direct recruit Assistant through 1991 Exam, who joined in 1992 or 1993 cannot be senior to a regular promotee of 1989 vintage. If that were so, applicants

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have not explained why in para 4.7 of the OA they have themselves admitted that while they were promoted from Assistants grade to SOs grade in 1997 vide A/5 Colly orders on various dates, their seniors (emphasis supplied), who had not rendered the prescribed 'approved service' were not promoted. If applicants in paras 3 and 4 of MA No.211/2001 are denying that Respondents 3 to 12 are senior to them, they are arguing against their own pleadings in para 4.7 of their OA.

16. In MA No.211/2001 a plea has also been made that in the event the OA is dismissed, the operation of the order should be stayed to enable applicants to approach the Delhi High Court. Applicants have themselves in MA No.211/2001 admitted that in as many as six cases on an identical issue, the claims of similarly placed Assistants to continue as SOs on adhoc basis although their seniors had acquired the eligibility qualification, was dismissed. It is true that in 2 out of those six cases, the Tribunals' orders have been stayed, and in one case, respondents have been directed to keep one post of SO vacant, but in none of those 6 cases have the Tribunal's orders been quashed or set aside. Till the same are quashed and set aside they are binding upon us, and we are unable to agree with applicants' counsel Shri Agarwal that all of them are per incuriam.

17. The materials or record reveal that so far, in terms of the recruitment rules for appointment to regular vacancies of SOs, the range of seniority is confined only up to Assistants whose names are included

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in the seniority list up to 1986. Applicants as well as respondents are however all Assistants of the 1989 seniority list and there is therefore no immediate prospect of either applicants or respondents being considered for regular promotion as SO for some years to come. Indeed with the downsizing of Secretariat their prospects for regular promotion would decrease even further.

18. In this context the question arises whether applicants who are junior to Respondents No. 3 to 12 have acquired a superior right merely because of their earlier adhoc promotion vis-a-vis respondents. We have already seen that they were promoted as SOs, on adhoc basis earlier, only because Respondents 3 to 12 did not have the necessary 8 years eligibility qualification at the time. As they have subsequently acquired the eligibility qualification, applicants have to make way for them, as has been held in as many as 6 orders of the Tribunal referred to by applicants none of which have been modified or set aside, and with whose ratios we as a coordinate Bench are bound.

19. In the light of the above, we find ourselves unable to grant the reliefs prayed for by applicants. In so far as the prayer for stay of the reversion orders in the event of dismissal of the OA is concerned to enable applicants to approach the Delhi High Court, this prayer has been opposed by respondents' counsel, and has not been granted in any of the 6 aforementioned cases. That may well be because such a prayer was not made in those cases, but there are no special circumstances to warrant any differential approach

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in the present case than what has been adopted in the aforementioned 6 cases, all of which were dismissed by the Tribunal.

20. In the result the OA is dismissed, and the prayer to stay the operation of the final/reversion order is rejected. No costs.

A. V. Vedavalli

(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige

(S. R. ADIGE)
VICE CHAIRMAN (A).

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