

19

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No.1963/2000
2. OA No.2685/2000

New Delhi this the 17th day of July, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA No.1963/2000

1. Y.S.R. Murthy, S/o Sh. Y.S. Narayana,
R/o 810, Asia House, K.G. Marg,
K.G. Marg, New Delhi.
2. S.K. Rao, S/o late Sh. S.K. Rao,
R/o 335, Laxmibai Nagar, New Delhi.
3. Devpreet A. Singh,
w/o Sh. Amanjeet Singh,
R/o N-9, Akash Bharti Apartment,
Patparganj, Delhi.

-Applicants

(By Advocate Shri A.K. Behera)

-Versus-

1. Union of India through
the Secretary, Ministry of
Information & Broadcasting,
Shastri Bhawan,
New Delhi.
2. Union Public Service Commission
through the Secretary,
Dholpur House, New Delhi.
3. The Secretary,
Department of Personnel & Training,
North Block, New Delhi.
4. H.C. Segon, Joint Director, NSD,
All India Radio, Broadcasting
House, Parliament Street, New Delhi.
5. M.M. Lal, Joint Director,
Directorate of Publication Division,
Patiala House, New Delhi.
6. Sumati Vashwanathan, Joint Director,
NSD, All India Radio, Broadcasting House,
Parliament Street, New Delhi.
7. A.S. Birgi, News Editor, NSD, All India Radio,
Broadcasting House, Parliament Street, New Delhi.
8. Rajendra Roy, Campaign Office, DAVP,
PTI Building, Parliament Street,
New Delhi.

-Respondents

(Official Respondents by Advocate Shri R.P. Aggarwal)

(Private Respondents by Advocate Sh. Rajinder Rai)

OA No. 2685/2000

1. Sh. D. Satapathy,
S/o Sh. Laxman Satapathy
2. Sh. R.C. Saldi,
S/o late Sh. SKD Saldi
3. Sh. M.Y. Siddiqui,
S/o H.M. Idris
4. Sh. Raju Korah,
S/o late Sh. V.K. Korah
5. Sh. Mehboob-ur-Rehman,
S/o late Sh. H.R. Farooq
6. Sh. Noorullah Khan,
S/o late Sh. Irtaza Khan
7. Sh. P.K. Thampi,
S/o Sh. P.K. Kuriakose
8. Sh. G.S. Randhawa,
S/o late Sh. S.H.S. Randhawa
9. Sh. S.V. Menon,
S/o Sh. K.K. Pillai
10. Sh. Dalip Singh,
S/o late Sh. Hazara Singh

-Applicants

(By Advocate Shri B.S. Maine)

-Versus-

1. Union of India, through
Secretary, Ministry of
Information & Broadcasting,
Shastri Bhawan, New Delhi
and 26 others (as per memo
of parties).

-Respondents

(Official Respondents by Sh. R.P. Aggarwal, Advocate)

(Private respondents through Sh. A.K. Behera, Advocate)

O_R_D_E_R_(ORAL)

Mr. Shanker Raju, Member (J):

In these OAs, two sets of employees have assailed a common seniority list. As the question of law is identical, these OAs are disposed of by this common order.

2. In OA-1963/2000 applicants who are direct recruits to Indian Information Service Group 'A' on the basis of the results of the Civil Service Examination has

(21)

(3)

assailed the seniority list dated 11.7.2000 basically on the ground that without circulating the draft seniority list and inviting objections from them the same has been finalised with the result they have been relegated by more than 150 positions in the seniority list. Applicants have sought quashing of the seniority list with direction to the respondents to consider their objection before finalising the seniority list and also to hold a review DPC to withdraw benefit of ad hoc service to the promotees and their rightful placement in the seniority list with all consequential benefits.

3. In OA-2685/2000 seniority list dated 11.7.2000 has been challenged by the promotees who were in the senior time scale of Indian Information Service (IIS, for short) Group "A" Grade of the CIS whereby their settled seniority has been changed to their detriment without affording them a reasonable opportunity to show cause. They have sought quashing of the list and restoration of their seniority vis-a-vis private respondents with all consequential benefits.

4. By an order dated 26.9.2000 as well as order dated 3.1.2001 further promotions on the basis of the impugned seniority list dated 11.7.2000 have been made subject to the outcome of these OAs.

5. It is relevant to enunciate the brief background leading to the present OAs. IIS is an organised Central Service previously known as CIS. In the year 1987 this service was bifurcated into IIS Group "A" and "B". Appointment to Grade II, i.e., Junior Grade IIS Group "A"

is made through two sources, direct recruitment by UPSC through Civil Services Examinations and departmental promotion from IIS Group 'B' in the ratio of 1:1 as per the recruitment rules. As the syllabus for direct recruitment was under revision rules could not be followed between 1.1.74 to 31.12.80. No direct recruitment could be made during this period but promotions continued. Officers were promoted on ad hoc basis despite existence of regular vacancies but they were not become eligible for further promotion as having worked in the feeder grade on ad hoc basis without requisite length of regular service.

6. The officers working on ad hoc sought their regular appointment counting this service for purposes of seniority and promotion in various OAs and Writ Petitions. In one of the decisions in T-1250/85 in S.C. Kacktwana & Ors. v. Union of India, by an order dated 6.3.87 the benefit of ad hoc service was extended to the petitioners above IIS. In another judgement TA-1183/85 in K.L. Wadhwa & Ors. v. U.O.I. by judgement dated 6.3.87 benefit of ad hoc service in Grade IV of IIS was extended to the petitioners. In two others OAs OA-1204/87 S.K. Nayyar & Ors. v. U.O.I. and in OA-1051/87 A.K. Roy & Others v. U.O.I. similar benefit was extended.

7. One Sh. A.K. Bhatnagar filed Writ Petition before the Apex Court in Writ Petition No.12874/85 seeking benefit of ad hoc service rendered in Grade IV of IIS for promotion to grade III. The judgements of the Tribunals taken to Apex Court in Wadhwa and Nayyar cases were clubbed and the Writ Petition was dismissed by the Apex Court on 9.11.90 by observing that in the absence of a provision in

the rules the length of service is taken into account. As the decision of Kacktwana, Arora and Roy cases were not clubbed as these pertained to benefit of service in Grade III onwards the decisions remained unaffected.

8. Government filed two SLPs Nos. 1708/88 and 1371/87 before the Apex Court challenging the decisions of the Tribunal in the cases of S.C. Kacktwana & Ors. and V.K. Arora & Ors. No stay was granted by the Apex Court and the judgements of the Tribunal were implemented by revising seniority of the petitioners taking into consideration their ad hoc officiation in various grades and giving them all consequential benefits by holding review DPCs in 1988. These benefits have also been granted to similarly circumstance officers. In compliance of the judgement of the Apex Court in Bhatnagar's (supra) case another review DPC was held in 1992. This resulted in a change in the seniority list.

9. Apex Court finally disposed of the Petitions in Kacktwana and Arora cases (supra) by dismissing the appeals and those who had already retired the finding of the Tribunal was not interfered with as regards conferring benefits to them. However, it was made clear that the question of law is left open and any law declared in any other case without prejudice to the rights of the appellants the decision would not come in its way but the right of the respondents shall not be disturbed.

10. The matter has been referred to the Law Ministry for advice and as per this legal opinion the seniority list has been finalised by placing enbloc

(6)

promotees of the recruitment year 1974-1980 senior to the first direct recruit of the recruitment year 1981 and interpolating direct recruits and promotees officers from recruitment year 1981 onwards as per DOP&T instructions dated 22.12.1959 readwith clarification dated 7.2.86. Inter-se-seniority of the promotees has been determined on the basis of the panels recommended by the original DPCs held in UPSC and benefit of ad hoc service was not given. The officers have been placed on the basis of the latest DPCs held for different grades for the reasons assigned in the remarks.

11. Though several contentions have been raised by Sh. A.K. Behera and Sh. B.S. Maine, learned counsel appearing for the applicants, but at the outset, revised seniority list has been impugned on the ground that the seniority list formulated by the respondents is based on irregularities and illegalities and though they were obliged to hold review DPCs after the decision in Kacktwana's case (supra) and thereafter to issue draft seniority list in various grades inviting objections and affording reasonable opportunity and thereupon to finalise the seniority list. As the seniority list has been finalised without issuing a tentative seniority list and in the seniority list the seniority of the applicants is depressed and they are relegated to lower position. The aforesaid action of the respondents is in violation of principles of natural justice. The reliance has been placed on the following decisions to contend that without preparing a draft seniority list and without calling for objections and giving an opportunity to show cause against the same any change in the seniority to the detriment of

the applicant cannot be countenanced, rendering the seniority list as unsustainable in law, being violative of principles of natural justice:

i) C. Navaneeswara Reddy v. Govt. of A.P. & Ors., (1998) 3 SCC 240.

ii) Virender Kumar v. Avinash Chadha, (1980) 3 SCC 472.

iii) P.V. Pithran v. State of Andhra Pradesh, ATR 1988 (1) 26.

iv) M. Venkiaah v. Union of India, ATR 1989 (2) 23.

v) M. Lawrence v. Union of India, 1975 (2) SLR 255.

vi) B.S. Bajwa v. State of Punjab, 1998 (1) ATJ 544.

vii) Daleep Singh v. State of Punjab, 1997 (1) ATJ 679.

viii) E.I. Joseph v. Union of India, 1991 (2) SLJ 73 (CAT).

12. Respondents' counsel Sh. R.P. Aggarwal denied the contentions and defended the seniority list by contending that the seniority list has been prepared as per the recruitment rules, guidelines and on the basis of the decision of the Apex Court and has been finalised also on the basis of the legal advice given to the Government. It is not for the first time that it has not been felt necessary to issue a draft seniority list and then finalise it after inviting representations and deciding them. While

preparing the seniority list panels given by the review DPC where the benefit of ad hoc service has been given in pursuance to various Benches of the Tribunal etc. has been ignored except in case of retired officers and the original panel given by the DPC wherein no benefit of the ad hoc service was given has been taken into account. As such there was no occasion to hold review DPCs for more than last 20 years.

13. In so far as ground of giving an opportunity to the applicants it is contended that the earlier seniority list circulated in 1993 was only a draft seniority list and subject to outcome of court cases pending before the Apex Court. The seniority list has been finalised on the basis of the directions of the Apex Court and legal opinion obtained thereon. Before finalisation of the seniority list representatives of direct recruits and promotees officers had met the Hon'ble Minister for Information and Broadcasting as well as Secretary a number of time and explained their view points which were duly taken into account while finalising the seniority list and as such there was no need to circulate the seniority list as a draft seniority list.

14. We have carefully considered the rival contentions of the parties and perused the material on record. Without going into the other contentions taken by the rival parties on merit, the seniority list is liable to be set aside only on the ground that it is contrary to the decision of the Apex Court as undoubtedly the seniority position of the applicants has been altered to their

(9)

detiment and the respondents before finalising the seniority list have not prepared a draft seniority list and had also not invited objections.

15. The decisions cited by the applicants in all four cover the question of law raised in these OAs.

16. In Nayaneeswara Reddy's case (*supra*) it has been clearly laid down that the Government before taking a decision has to invite objections from the aggrieved parties and after considering them with application of mind should take a final decision.

17. Moreover, in Vinod Kumar Sharma v. State of U.P., 2001 (4) SCC 675 on the dispute regarding seniority the Apex Court has ruled that when the seniority is to be disturbed and re-fixed prior opportunity should be given to the affected persons.

18. If one has regard to the aforesaid decisions we find that the clarificatory note attached to the revised seniority list incorporates a clause to the effect that any officer who needs further clarification can address his queries to the Deputy Secretary for additional information.

19. In the event the seniority list is revised and as a result the seniority of the applicants is altered to their detriment it is their right to be accorded a pre-decisional hearing with a view to ensure that they may also put their objections and persuade the respondents to take an appropriate decision. For this, it is incumbent upon the respondents to have issued a draft seniority list,

(10)

seeking objections from the applicants. Although the seniority list has been issued on the basis of the decisions of the Apex Court and as per the advice of the Ministry of Law but merely the representatives of both sets of employees have few rounds of meeting with the Hon'ble Minister of I&B and Secretary, I&B would not be a sufficient compliance, if one has regard to the concept of reasonableness in the action and fairness in the procedure. The cardinal principles of audi alterm partem mandate an effective hearing to the affected person. The action of the respondents by finalising the seniority without putting it to the notice of the applicants and seeking their objections and an opportunity to them to show cause renders the list as not legally sustainable.

20. In the result and for the reasons recorded above, the impugned seniority list dated 11.7.2000 is quashed and set aside. The respondents are directed to put the applicants to show cause notices and after considering their pleas and thereafter in accordance with the rules and instructions recast the seniority list within a period of six months from the date of receipt of a copy of this order. The OAs are disposed of accordingly. No costs.

21. Let a copy of this order be placed in the case file of each case.

(Shanker Raju)
Member (J)

'San.'

(M.P. Singh)
Member (A)

Photocopy, attached in Part B
Original on file Part (A)