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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 891/2000 with

MA No. 1165 & MA -1520 of 2000

New Delhi: this the 22nd day of December, 2000.

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

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

1. S/Shri

Subhash Monga,
S/o Late Shri B. R. Monga,
8/39, South Patel Nagar,
New Delhi.

2. J. P. Pandey,
S/o Shri R. N. Pandey,
D-616, Mandir Marg,
New Delhi.

3. A. S. Mehra,
S/o Shri M. G. Mehra,
1206/8, R. K. Puram,
New Delhi.

4. Hari Singh,
S/o Shri Umrao Singh,
H. No. 27, Ambedkar Gali No. 5,
Maujpur,
Delhi-53.

5. Mrs. Uttma Thakur,
W/o Shri M. P. Thakur,
Block No. 17, House No. 936,
Lodhi Colony,
New Delhi.

6. Smt. Prabha Sharma,
W/o Shri Ashok Kumar,
A-38, Radhey Sham Park Extension,
Delhi-51.

7. Sh. T. D. Malhotra,
S/o Shri Ram Lal,
J-3/58, Ground Floor,
Rajouri Garden,
New Delhi

.....Applicants.

(By Advocate: Shri G. K. Agarwal.)

Versus

1. Union of India,
through Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi.-1

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2. Secretary,
Department of Personnel and Training,
Ministry of Personnel and Public Grievances and
Pensions,
North Block,
New Delhi-1

....Respondents.

(By Advocate : Shri K.R.Sachdeva)

ORDER

S.R.Adige, VC(A):

Applicants had filed this OA on 16.5.2000 apprehending that they might be reverted and replaced by other adhoc appointees. They sought a direction that they be replaced only by regularly appointed SOs and not by adhoc appointees.

2. An exparte interim order was passed on 16.5.2000 restraining respondents from disturbing the status quo as on that date. Later, after hearing both sides, the exparte interim orders were modified on 31.8.2000 making any action contemplated by respondents subject to the outcome of the OA.

3. Applicants are holding the substantive posts of Assistant. The next promotional level is that of Section Officer, promotions to which are governed by the CSS Rules, 1962. Under Rule 13(2)(a) of those Rules officers of Assistants' grade who have rendered not less than 8 years of approved service in the grade and are within the range of seniority are eligible for consideration for promotion as SO on the basis of seniority subject to rejection of the unfit.

4. By order dated 27.1.97 and 19.2.97 (Annexure-A3) applicants were promoted as SOs on purely adhoc basis for a period of 2-3 months or till further orders. It was made clear in those orders that their adhoc appointments

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would not confer on them any right to regularisation in the same grade or to claim benefits of seniority etc. in future. It was also made clear that Govt. reserved the right to terminate the adhoc appointments without assigning any reason or giving any notice.

5. These orders appointing applicants on adhoc basis, were thereafter extended from time to time by specific orders.

6. Posts of Assistants are filled not only by promotion, but also through direct recruitment, and respondents aver that direct recruit Assistants, although shown senior to applicants in the seniority list of Assistants, could not be promoted at the relevant time as SOs on adhoc basis, as they did not have the prescribed essential qualification of 8 years' approved service. Now that they had acquired the aforesaid Edu.qualification of 8 years' approved service, it was necessary to revert applicants from the posts of SO to which they had been promoted on adhoc basis and promote the Assistants who were admittedly senior to them as SOs on adhoc basis, pending regular promotion of SO because otherwise, while juniors would be functioning as SOs, their senior would be serving below them as Assistants, which would be arbitrary and violative of Articles 14 and 16 of Constitution.

7. We have heard applicants' counsel Shri G.K. Agarwal and respondents' counsel Shri K.R. Sachdeva.

8. Shri Agarwal has contended that eligibility has to be kept distinct from seniority. He has argued

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that these vacancies of SOs which were filled up on adhoc basis in 1997, were regular vacancies, and persons who had now acquired the eligibility of 8 years approved service were not eligible to be promoted to these posts when the vacancies initially arose; nor had ^{they} any vested right to be promoted to these posts. It was also contended by him that these promotions of applicants to the posts of SO had been actually made in accordance with Rule 14 CSS Rules, 1962 according to which substantive vacancies could be filled temporarily in accordance with the provisions governing ^{appointments} ~~appointments~~ to temporary vacancies in the relevant grade until it was filled in accordance with the rules governing substantive appointments.

9. We have considered these contentions carefully.

10. The wording of the promotion orders, and the fact that it specifically states that the promotions are being made on an adhoc basis, and ^{would} ~~will~~ not confer any right to claim seniority etc. leave no doubt in our minds that they were issued under Rule 13(A), and not under Rule 14. It is true that normally an adhoc employee should not be replaced by another adhoc employee, and there are also certain CAT rulings to this effect, one such being in OA No. 957/2000 Smt. Asha Singhal Vs. UOI disposed of on 27.6.2000, but we find that in that case respondents were not represented, and it was perhaps for that reason it was not pointed out to the Bench that the aforesaid ruling that one adhoc employee should not normally be replaced by another adhoc employee, could not be construed to perpetuate a situation when a

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senior was compelled to work under his junior which itself would be arbitrary and violative of Articles 14 and 16 of the Constitution.

11. Now, ^{that} those assistants senior to applicants, have acquired the necessary eligibility of 8 years' approved service for appointment as SOs, applicants have to make place for them, even if it be on adhoc basis. There is also no merit in the contention that for these adhoc promotions, the vacancies have to be treated as permanent and as having occurred in 1997 at which time those who have now acquired eligibility were not eligible.

12. We are fortified in our view by the Tribunal's order passed as recently as 9.11.2000 in OA No.1407/2000 S.C.Sharma & Ors. Vs. UOI & Ors.

13. In this connection, we note that after the interim orders were vacated, respondents have since promoted Assistants senior to applicants, who had since acquired the Ed.qualification of 8 years of approved service on adhoc basis vide order dated 8.9.2000 (Annexure-A/8) and applicants have been reverted.

14. We have been informed that some cases decided by the Tribunal in which the same view as in SC Sharma's case (supra) was taken, has been challenged in the Delhi High Court, but we have not been shown any order of the Delhi High Court in which that view has been faulted.

15. The OA therefore warrants no interference. It is dismissed. No costs.

A. Veda Valli
(DR.A.VEDAVALLI)
MEMBER (J)

/ug/

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