

CAT/7/12
(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1210/89
T.A. No.

199

DATE OF DECISION 3.7.1991.

Shri Raghūbir Singh & Others Petitioner

Applicant in person Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent


Shri P.H. Ramchandani, Senior Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓


(AMITAV BANERJI)
CHAIRMAN
3.7.91.

(8)

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PRINCIPAL BENCH: NEW DELHI

OA No. 1210/89

DATE OF DECISION: 3.7.1991

SHRI RAGHUBIR SINGH & ORS. APPLICANTS

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

APPLICANTS IN PERSON

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI,

SENIOR COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

S/Shri Raghubir Singh, Virender Kumar, Sukh Lal who are working as Civilian Staff Officer (CSO) in the Armed Forces Headquarters (AFHQ) have filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the Order(s) No.43791/85-86/CAO(P-1)/i dated 17.8.1988 and No. 43791/-89/CAO(P-1) dated 28.2.1989.

2. The applicants who are permanent Assistant Civilian Staff Officers (ACSO), Group 'B' Gazetted, were promoted to officiate as Civilian Staff Officers (Group 'A') vide Select List drawn by a duly constituted Departmental Promotion Committee (DPC) in consultation with Union Public Service Commission vide No. A/05641/81/CAO(P-1) dated 05.10.1981. The respondents issued a seniority list on 8.7.1985 of CSO (Annexure-B) indicating their seniority as on 1.7.1985. Although the

2

9

applicants No. 1, 2 and 3 figure in the said seniority list at S.No.18, 5 and 2 respectively, yet they have not been considered for promotion to the grade of Senior Civilian Staff Officers (SCSOs) in accordance with their seniority. On the other hand the respondents have promoted officers junior to them in the list of CSOs w.e.f. 14.2.1989. The initial adhoc promotion of the juniors of the applicants to the grade of SCSOs has been further extended upto 6.8.1989 vide impugned order dated 28.2.1989. The applicants No. 1 and 2 sought redressal of their grievance by representing to the respondents on 28.9.1988 and 9.9.1988 respectively with the request that the directions of the Central Administrative Tribunal, as contained in the judgement dated 22.8.1986 in **K.N. Misra and others vs. Union of India in OA No.41 of 1986** and **N.K. Dhawan Vs. Union of India in OA No. 79 of 1986** be implemented in its correct perspective. The respondent department, however, rejected both the representations vide order dated 14.10.1988 (AnnexureH) and 30.9.1988 (Annexure-K) respectively by taking the plea that the seniority of the petitioners has been refixed in the grade of Assistants as per judicial pronouncement of the Hon'ble Supreme Court dated 25.4.1985 and Delhi High court dated 24.9.85. The applicants contend that the Hon'ble Supreme Court and the Delhi High Court had only directed the respondents to revise the seniority list of the Assistants and that the judgements cited by the respondents cannot be construed to reopen the seniority of the applicants in the grade of CSOs in any manner whatsoever. They further submit that no other seniority list of CSOs exist in the AFHQ except the one issued on 8.7.1985 (AnnexureB). They, therefore, submit that the action of the respondents in promoting the juniors is

2

unjustifiable and unsustainable in law.

3. By way of relief, the applicants have prayed that the respondents be directed to consider the claim of the applicants for promotion to the post of Senior Civilian Staff officers and if found fit to promote them from the date from which their juniors have been promoted on the basis of their seniority in the grade of Civilian Staff Officer (Group 'A) giving all consequential benefits.

4. The stand of the respondents is that the applicants were appointed as direct recruit Assistants based on Assistant's Grade Examination 1972 and 1973 conducted by the UPSC as under:

Shri Virender Kumar 20.10.1973

Shri Sukh Lal 23.05.1973

Shri Raghubir Singh 07.12.1974

They all belong to Scheduled Caste Community. Their seniority in the grade of Assistant was fixed on rota-quota principle on a notional basis. Further they were promoted as ACSOs as the rules in the AFHQ provide that if any person in the grade of Assistant is considered for promotion to the grade of ACSO, all persons senior to him in the grade of Assistant and belonging to Scheduled castes and Scheduled Tribes, who have rendered not less than three year's approved service shall also be considered for promotion. Thus the applicants were considered for promotion to the grade of ACSO even before they completed the requisite five years approved service as their juniors were being considered for promotion. Applicant No.1 was promoted as ACSO on 7.11.1978 and Applicants No. 2 and 3 w.e.f. 30.7.1978, based on the panel for the year 1977-78, drawn as per original seniority list which was under dispute in Delhi High Court. These promotions were accordingly made subject to

2

the ultimate decision of the Delhi High Court. The applicants received further promotion as CSO as per their position in their original panel of ACSOs for the year 1977-78. Consequent to the decision of the Hon'ble Supreme Court, Delhi High Court and the Tribunal, the respondents revised the seniority of Assistants on 7.11.1988 and reviewed the panel for promotion to the grade of ACSOs beginning from the year 1977-78 to 1988. The applicant No.3 now appears in the reviewed panel of ACSOs for the year 1978-79 and applicants No. 1 & 2 in the panels for 1980-81 as against their original position in the panel for the year 1977-78. The change in the panel for ACSOs also entails review of panels of ACSOs/ for promotion to the grade of CSO for the year 1981-82 to 1983-84. Consequently the officers mentioned in Annexure 'C' to the application and promoted under Rule 10(2) of AFHQ Civil Service Rules, 1968 vide impugned order dated 17.8.1988 all appear in the reviewed panel of ACSO and SCSO for the year 1977-78 and 1981-82 respectively. On the other hand, the applicant No.3 found place in the reviewed panel of ACSOs in 1978-79 and applicants Nos. 1 & 2 in the panel for 1980-81. They do not find place in the reviewed panel for CSO for 1981-82. The respondents, therefore, contend that the officers promoted as SCSOs are not juniors to the applicants but are senior to them as they figure in panels of ACSO/CSO for the years 1977-78 and 1981-82 respectively. The seniority list of CSOs dated 8.7.1985 has no relevance and is not enforceable as the original seniority of Assistants published in 1977 and 1984 have been set aside by Delhi High Court and the Supreme Court. They further submit that the applicants have no claim for promotion to the

2

grade of SCSO, as the Select List issued on 5.10.1981 for promotion to the grade of CSO was provisional and subject to the final decision of the relevant writ petitions pending before the Hon'ble Supreme Court and Delhi High Court.

5. The applicants also filed a rejoinder.

6. We have heard the applicants in person. They have drawn our attention to paragraph 38 of the **P.S. Mahal and Ors. Vs. UOI & Ors. AIR 1984 SC 1281** where their Lordships observed:-

"When the seniority in the grade of Executive Engineers is rearranged in accordance with the directions given in the judgement, the cases of Assistant Engineers who would have been due for consideration for promotion as Superintending Engineers and thereafter as Chief Engineers on the basis of their revised seniority, will be considered by a duly constituted Departmental Promotion Committee as on the dates on which they would have been due for such consideration if the correct seniority had been given to them, and if on the basis of their performance and record as on those dates they would have been selected for promotion, they must be given promotion with retrospective effect from such dates and if necessary, supernumerary posts in the grades of Superintending Engineers and Chief Engineers shall be created for the purpose of accommodating them and all arrears of salary and allowances shall be paid to them on the basis of such retrospective promotions."

2

7. Shri P.H. Ramchandani, Senior Counsel for the respondents submitted that an identical case has already been disposed of by the Tribunal on 21.2.1991 in OA No. 1787/87 - D.G. Andrew & M.C. Scaria v. UOI & Ors. and, therefore, it was perhaps avoidable to traverse the same grounds once again.

8. We have considered the matter carefully and perused the record. Briefly the seniority list of Assistants dated 4.6.1977 prepared on the principle of rota-quota was challenged in the Delhi High Court by some promotees Assistants in Writ Petition **No. 2/78 A.P. Joshi and Ors. Vs. UOI & Ors.** While this petition was still pending another group of promotee Assistants challenged the seniority list of Assistants dated 10.8.1984 vide writ petitions **No. 15436-49 of 1984 - N.K. Dhawan & Ors. Vs. UOI & Ors.** Their Lordships of the Hon'ble Supreme Court in their order dated 25.4.1985 observed:

"The impugned seniority list is dated 10.8.1984. Some of the errors and defects pointed out in the seniority list are such as would render it illegal and invalid"

Their Lordships further directed that:-

"The impugned seniority will not be enforced or given effect to till fresh seniority list according to relevant Rules and valid principles is drawn up. Rule is made absolute to that effect with no orders as to costs. Panel of promotions will have to be redrawn in the light of the revised seniority list. We order accordingly. All promotions till now made and till now seniority list is drawn up will be subject to the fresh seniority list which should be drawn up within four months from today."

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14

The Delhi High Court also quashed the seniority list dated 4.6.1977 and 28.10.1977 on 24.10.1985 and directed the respondents to prepare fresh seniority list as per the directions of the Supreme Court. The Delhi High Court also allowed the petition with all consequential benefits. The matter was thereafter raised before the Central Administrative Tribunal and vide their orders in **K.N. Misra & Ors. Vs. UOI & Ors.** (supra) the Tribunal directed the respondents:

"to draw up a complete seniority list in the light of this judgement, including therein all the temporary, permanent and officiating Assistants working in substantive vacancies giving them the benefit of continuous officiation and also to frame a fresh panel of promotion based on that seniority list within three months of the receipt of this order." (emphasis supplied).

As observed by us in the case of **D.J. Andrews and M.C. Scaria OA-1787/87 decided on 21.2.1991** once the foundation of the structure has been shaken, by quashing the seniority list of 1977 and 1984 in the grade of Assistants, the edifice built thereon cannot be insulated from the intensity of the shocks leading to its falling apart in pieces. Our observation in paragraph 5 of the **Andrew Scaria** (supra) are equally applicable in this OA, as the points of law and fact are identical in nature. The said paragraph is reproduced below:

"We are of the view that the respondents have acted scrupulously in accordance with the orders of the Hon'ble Supreme Court and directions of the Tribunal and the High Court. The preparation of a complete seniority list and to redraw the seniority

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13


list implied a complete overhaul in accordance with the principles laid down in the relevant judgements. The Hon'ble Supreme Court has also held that all promotions made upto now i.e. 25.4.1985 and till new seniority list is drawn up will be subject to the fresh seniority list. It is quite clear from these directions that consequent to the redrawing of the seniority list the panels in the higher grades would necessarily undergo a major overhaul. If the very basis i.e. seniority list on which the promotions were made has been held to be illegal, the consequential benefits that accrued from the illegal seniority cannot be legally sustained. We, therefore, do not see any merit in the argument that the seniority list of the Assistants may be kept in tact as revised but the fall out therefrom should be contained so as not to affect those who had benefitted from the seniority lists which have been quashed."

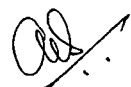
Before concluding we would like to observe that the observations of the Hon'ble Supreme Court in paragraph 38 of **P.S. Mahal v. UOI** (supra) are not applicable in this case, as the facts and circumstances of that case are distinguishable from the matter before us. The direction of the Hon'ble Supreme Court that if necessary supernumerary posts may be created for giving effect to the promotions consequent to the rearrangement of the seniority of the Assistant Engineers from

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the dates they would have been selected for promotion was in the context of assignment of the correct seniority to the petitioners. Further this direction was aimed at ameliorating the hardship of the petitioners, as the deviation from year to year for a period of over 25 years from the quota rule had considerably aggravated the discrimination against the Assistant Engineers. Their Lordships, therefore, not only protected the interest of the petitioners but also those who had received the benefit of officiating in higher grade over a period of time. In the application before us, the question is not that of possible reversion of the applicants. What they are asking for is promotion on the basis of wrong seniority which was not due to them.

In the facts and circumstances of the case the OA is dismissed, with no order as to costs.


(I.K. Rasgotra) 1/7/1991
Member (A)


(Amitav Banerji)
Chairman