

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.1440/89.

New Delhi, this the 22nd day of April, 1994.

SHRI J.P.SHARMA, MEMBER(J).

SHRI S.R. ADIGE, MEMBER(A).

1. S.S. Bhattacharya,
S/o Late Sh. M.M. Bhattacharya,
resident of 855, Luxmi Bai Nagar,
New Delhi-110023,
working as Analyst, Ministry of Health & Family Welfare,
Department of Family Welfare, New Delhi.
2. A.K. Saksena,
S/o SHri J.S. Saksena,
resident of 87-M, Sector IV, D.I.Z. Area,
Baba Kharak Singh Marg,
New Delhi-110001,
Working as Assistant Statistician,
Ministry of Health & Family Welfare,
Department of Family Welfare, New Delhi.
3. Yogesh Goel,
S/o Late Shri B.L.Goel,
resident of 89/445/S-I/DIZ Area,
Baba Kharak Singh Marg, New Delhi-110001,
working as Programmer,
Ministry of Health and Family Welfare,
Department of Family Welfare,
New Delhi.
4. Ram Gopal,
S/o Shri Jagdish Prashad,
resident of 152 L, Aram Bagh Complex,
New Delhi-110055,
working as Investigator (Statistics),
Directorate General of Health Services, New Delhi.
5. Z.A. Lari,
S/o Late Shri M.A. Lari,
resident of F/E-43, Kavi Nagar,
Ghaziabad-201002 (U.P.),
working as Investigator (Statistics),
Ministry of Health and Family Welfare,
Department of Family Welfare, New Delhi.
6. R.D. Bansiwal,
S/o Shri Hattu Ram,
resident of 3377, Ranjeet Nagar,
New Delhi-110008,
working as Investigator (Statistics),
Directorate General of Health Services, New Delhi.

...Applicants

By advocates : Shri Goerge Paricken for applicants 1 to 4.

Shri P.L. Mimroth for applicants 5 and 6.

VERSUS

1. Union of India,
through the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi-110011.
2. Office in Charge,
Dept. of Statistics,
Ministry of Planning,
Sardar Patel Bhavan,
New Delhi-110001.

...Respondents

By advocate : Shri P.H.Ramchandani, Sr. Counsel.

O R D E R

SHRI J.P.SHARMA:

The applicants have been working as regular Investigators (Statistics) in the Directorate General of Health Services, Ministry of Health and Family Welfare. By virtue of Indian Statistical Services Rules, 1961 (hereinafter called the rules) issued by Ministry of Home Affairs, as amended from time to time, the applicants were eligible for promotion to the higher post of Research Officer/Assistant Director (ISS Grade IV) sometimes in February, 1983. The grievance of the applicants is that they have not been promoted on ad hoc basis inspite of the recommendations by the DPC convened in 1983. The representation by applicant no.1 and 2 was rejected by the order dated 22-7-88 (Annexure A-I). Hence, they filed the present application in July, 1989. The applicants have also moved certain M.A. for amendment of the application. That M.A. has been considered at the time of hearing and the applicants' counsel has been allowed to argue the matter. The counsel for the respondents had no objection for reading the documents filed as annexures to the amended O.A. after treating them as part of the original application.

2. The respondents in the reply have stated that the applicants have no case and further the applicants were never promoted on ad hoc basis as Research Officer/Assistant Director though they were recommended by DPC held in 1983. The reasons for their non-promotion is that the applicant no.5 to 6 were too

juniors and were not recommended by the DPC and the applicants 1 to 4 were recommended by DPC but they refused ad hoc promotion as they had to ^{move} out of Delhi in view of the fact that there were no vacancies available at the headquarters at Delhi. Second time when their matter was considered when vacancies arose in Delhi, the Department of Personnel & Training, the then cadre controlling authority in respect of ISB, directed that the ad hoc appointments may not be made as regular incumbents in Class IV of ISS are available. In the meantime, the Hon'ble Supreme Court decided the case of the officers of Indian Statistical IV, i.e., Narendra Chadda's case on 11-2-1986 and the Supreme Court gave certain directions in that judgment to be complied with by the respondents. The directions of the Hon'ble Supreme Court were in the nature of one time solution with reference to the ad hoc appointments already made. Thus, according to the respondents, the benefit of due regular appointment to the grade IV of Indian Statistical Service is available only to the ad hoc appointees who had been appointed prior to and were in position on 11-2-86. The ad hoc appointments to the grade of Research Officer/Assistant Director in the Department of Family Welfare were made whenever the necessity arose in the exigencies of public interest in accordance with the instructions issued by the Government from time to time after obtaining the approval of the competent authorities. However, no ad hoc appointments are made as per the *Cadre Controlling Ministry* advice of statisticians. The applicant no.1 to 4 have given in writing that they were not interested for posting outside Delhi when they were offered ad hoc appointment to places other than Delhi. Applicant no.5 and 6 were not recommended being juniors. The applicants, therefore, have no case as the applicants were not given ad hoc appointments whatever may be the reasons. There is no discrimination as a number of feeder grade persons working in different Ministeries/Departments had not been given ad hoc

appointments even though their juniors in terms of the integrated feeder grade eligibility list or otherwise had been made full members of the ISS (grade IV) in terms of the judgment dated 11-2-86. However, some of the persons approached the Hon'ble Supreme Court in the case of B.S.KAPILA AND OTHERS VS. UNION OF INDIA and the Hon'ble Supreme Court issued stay order against appointment to Grade IV of ISS on 11-12-87. Applicant no.1 to 5 have since been given the benefit of the judgment of B.S.KAPILA AND OTHERS as directed by the Hon'ble Supreme Court in the judgment dated 11-9-1990.

3. We heard the learned counsel for the parties and perused the records. The relief claimed by the applicant that the respondents be directed to issue promotion on ad hoc basis on the basis of the DPC recommendations held in February, 1983 cannot be granted at this stage in view of the fact, that applicants no.1 to 4, namely, S.S.Bhattacharya, A.K.Saksena, Yogesh Goel and Ram Gopal were offered appointment and posting on ad hoc basis as Assistant Director/Research Officer but the applicants themselves refused as they did not like the promotional post outside Delhi. The respondents when considered the matter again when the vacancy occurred at headquarters, at Delhi, then the cadre controlling authority directed the respondents not to fill up the post on ad hoc basis as the regular incumbents are being sent. Further, in the case of B.S.KAPILA, the Hon'ble Supreme Court granted a stay that no appointments to Grade IV of ISS be made. Subsequently, on the basis of the case of B.S.KAPILA, the Hon'ble Supreme Court directed the respondents to give promotion and the respondents have considered the case of applicants no.1 to 5 and all of them have been given promotion to grade IV of ISS w.e.f. 1-10-90 in the case of applicant no.1,2 and 4 by the order dated 7-5-91 and in the case of applicant no.3 and 5 by the order dated 4-1-91. The case of applicant no.6 was also considered and he was also not

recommended by the DPC held in 1993 and the respondents considered the case of the applicant no.6 also on the basis of the judgment of B.S.KAPILA and by the order dated 1-5-91, the claim of the applicant no.6 Shri R.D.Bansiwal was not found analogous to other applicants. Thus, the applicants have already been considered and those who are eligible have since been promoted to grade IV of the ISS. The respondents have rightly taken the stand that the applicants were not holding ad hoc appointment as Research Officer/ Assistant Director in the Ministry of Health and Family Welfare firstly because of their own refusal as regards applicant no.1 to 4 is concerned, and subsequently, by the direction issued by cadre controlling authority that ad hoc appointments be not made. Had the applicant no.1 to 4 accepted the posting outside Delhi and those got ad hoc appointments and continued to be so on 11-2-86, they would have been covered by the judgment of Narender Chadda decided by Hon'ble Supreme Court on 11-2-86 and as such they would have become members of grade IV of ISS. But having declined the ad hoc appointments, the applicant no.1 to 4 continued in the feeder grade post only and they have no claim for appointment to grade IV of ISS.

4. The learned counsel for the applicants has raised the point of discrimination that in different Ministeries and Departments, the persons who are junior in the integrated feeder grade eligibility list, have been promotion and as such when juniors have been given promotion, the applicants should also have been considered and given promotion from the date such juniors have been promoted on ad hoc basis. In fact, this is not a case of discrimination inasmuch as a number of feeder grade persons working in different Ministeries/Departments had also not been given ad hoc appointments even though their juniors in terms of the integrated feeder grade eligibility list have been given promotion. Thus, it is not the case of the applicants alone where

ad hoc promotion to the post of Assistant Director/Research Officer were not given but there are many others similarly situated who have not been given ad hoc appointments. The question of discrimination, therefore, does not arise in such a case. The applicants in the amended O.A. have also filed documents including the seniority list by which it is pressed that the case of the should also be considered in the vacancies which were existing in 1983. The applicants are estopped to raise this issue when applicant no.1 to 4 themselves have declined the offer of posting outside Delhi and applicant no.5 and 6 were not recommended by DPC held in 1983. It is further argued that the applicants should have been considered subsequently in the year, 1984, 85 and 86. The respondents have rightly taken the stand that when the matter of applicant no.1 to 4 was considered in 1984 when the vacancies arose at Delhi headquarter, the cadre controlling authority stopped ad hoc appointments of Grade IV of ISS as regular incumbents were coming. The applicants have no claim for ad hoc posting when the regular incumbents are already available.

5. In view of the above facts and circumstances, we find no merit in this application and the same is, therefore, dismissed as devoid of merit. Cost on parties.

Adige
(S.R.ADIGE)

MEMBER(A)

Sharma
(J.P.SHARMA)

MEMBER(J)

'KALRA'
22041994.